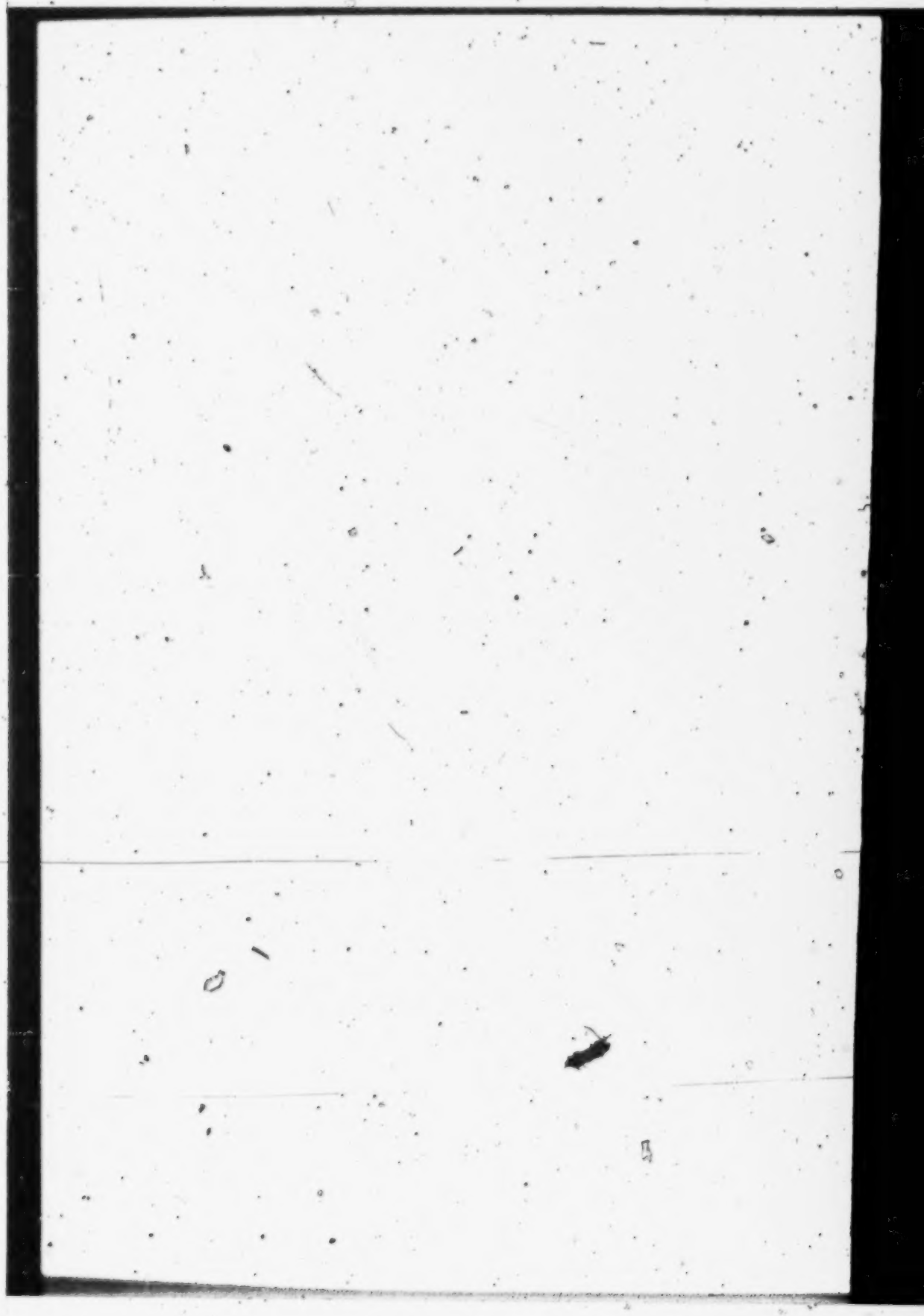

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 585

MRS. OSCAR C. DOTY ET AL., APPELLANTS,

vs.

J. S. LOVE, SUPERINTENDENT OF BANKS OF THE STATE OF MISSISSIPPI

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

INDEX.

	Original	Print
Proceedings in Supreme Court of Mississippi	A	1
Caption (omitted in printing)	A	
Præcipe for transcript of record (omitted in printing)	1	
Record from Chancery Court of Lee County	4	1
Petition	4	1
Exhibit 1—Condensed statement of Peoples Bank & Trust Co., December 24, 1930	23	14
Exhibit 2—Depositors agreement	24	15
Exhibit 3—Statement of Peoples Bank & Trust Co., May 1, 1933	28	17
Exhibit 4—Statement as of date of re-opening of Peoples Bank & Trust Co.	30	18
Exhibit 5—Statement of Peoples Bank & Trust Co. as of date of re-opening	31	19
Exhibit 6—Consolidated statement of Peoples Bank & Trust Co.	32	20
Decree fixing time and place of hearing	33	22
Notice to depositors, creditors, and other parties in interest and proof of publication	35	23
Objections of Mrs. Oscar C. Doty and J. S. Wesson	37	25
Petition and objections of Mrs. Nannie McCarty (omitted in printing)	48	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 12, 1935.

—5965

	Original	Print
Motion of Mrs. Nannie McCarty for leave to become party objector (omitted in printing)	51	
Petition of depositors committee relative to re-opening	52	33
Answer, objections, etc., of Mrs. Oscar C. Doty et al	56	35
Decree authorizing re-opening of bank	68	44
Statement of furniture and fixtures accrued in new bank (omitted in printing)	93	
Statement of real estate (omitted in printing)	94	
Statement of bank buildings	95	64
Statement of furniture and fixtures	96	64
Statement of real estate	97	65
Statement of bank buildings	98	65
Appraisal of loans and discounts	100	66
Statement of earnings and expenses	101	67
Statement of evidence	102	68
Appearances and agreement as to hearing	102	68
Order sustaining motion for consolidation (omitted in printing)	104	
Motion for order requiring petitioner to make his pleadings more specific (omitted in printing)	105	
Agreements as to certain facts (omitted in printing)	109	
Renewal of motion to make more specific (omitted in printing)	111	
Colloquy (omitted in printing)	112	
Testimony of V. S. Whitesides	117	68
G. C. Mabry (omitted in printing)	146	
C. H. Dabbs (omitted in printing)	152	
V. S. Whitesides (recalled)	155	90
A. C. Powell	165	98
J. N. Whitesides (omitted in printing)	170	
Opinion of court	174	101
Petition of Mrs. Lorene R. Tolman for leave to join in appeal (omitted in printing)	175	
Petition and motion for substitution of lost record (omitted in printing)	178	
Assignment of errors in behalf of Mrs. O. C. Doty and Mrs. Lorene Roberts Tolman	183	101
Assignment of errors in behalf of Mrs. Nannie McCarty	186	104
Assignment of errors in behalf of appellant (Mrs. Birdie Lowry Dunn, nee McCord)	188	105
Amended assignment of errors in behalf of appellant	190	106
Order granting motion for permission to amend assignment of errors (omitted in printing)	192	
Motion of appellant, Mrs. Birdie Lowry Dunn, to dismiss her appeal (omitted in printing)	193	
Order sustaining motion to dismiss appeal of appellant, Mrs. Birdie Lowry Dunn	194	107
Order remanding cause to docket before Division "A" (omitted in printing)	195	
Decree	196	107

	Original	Print
Opinion, Griffith, J.	197	108
Dissenting Opion, Ethridge, J.	208	116
Motion for addditional time in which to file suggestion of error (omitted in printing)	226	
Order granitng fifteen days additional time within which to file suggestion of errors (omitted in printing)	227	
Suggestion of errors by appellants... (omitted in printing)	228	
Order overruling suggestion of error (omitted in printing)	232	
Citation and service... (omitted in printing)	233	
Petition for appeal	235	129
Letters of administration, estate of Mrs. Nannie McCarty, deceased (omitted in printing)	247	
Decree of chancellor granting petition for letters of administration (omitted in printing)	249	
Assignment of errors in supreme court of Mississippi	251	130
Appeal bond (omitted in printing)	253	
Order granting appeal to United States Supreme Court	255	132
Appellee's praecipe for transcript of record (omitted in printing)	285	
Record from Chancery Court of Lee County	287	133
Supplement to petition for reopening of Peoples Bank & Trust Co.:		
List of loans and discounts carried in reopened bank	287	133
List of loans and discounts securing pooled assets	302	145
Live stock account carried in pooled assets; automobile account carried in pooled assets and list of property carried in tax title account included in pooled assets	314	157
Cash items carried in pooled assets	315	158
Bond account	316	158
List of bonds held by Peoples Bank & Trust Company in which an equity is held for pooled assets.	317	159
List of overdrafts carried in reopened bank	320	163
List of stock held by reopened bank in which there is an equity due pooled assets	321	163
List of furniture and fixtures of reopened bank in which there is an equity in pooled assets	322	163
Real estate held by reopened bank in which there is an equity due pooled assets	323	163
Information as to overdrafts in Peoples Bank & Trust Company at time of closing	330	
Clerk's certificate (omitted in printing)	331	
Statement of points to be relied upon and designation as to printing record	332	167
Designation by appellee of additional parts of record to be printed	336	170

[fols. a-3] [Caption omitted]

[fol. 4]

IN CHANCERY COURT OF LEE COUNTY, STATE OF MISSISSIPPI

No. 6583

In the Matter of the Liquidation of Peoples Bank & Trust Company, of Tupelo, Mississippi, by J. S. Love, Superintendent of Banks

Petition

To the Honorable James A. Finley, Chancellor of the First Chancery District of Mississippi:

Now comes J. S. Love, Superintendent of Banks of the State of Mississippi, in charge of the liquidation of the Peoples Bank & Trust Company, of Tupelo, Mississippi, and would respectfully show unto the court as follows:

That the Peoples Bank & Trust Company aforesaid was closed for liquidation on the 24th day of December, 1930, and its affairs were turned over to petitioner for liquida-
[fol. 5] tion in his official capacity according to the banking laws of this State, and petitioner has been engaged in the liquidation of the affairs of said bank since that time, under the supervision of this court. That no dividends have been paid to the depositors and common creditors of said bank, but that all bills payable due by said bank have been paid, and all deposits of public money have been paid, and all claims which have been established as preferred claims have been paid.

I

Petitioner respectfully shows that since the closing of said Peoples Bank & Trust Company aforesaid, some of its directors, and stockholders, acting in conjunction with petitioner, his agents and assistants, and also with the Depositors' Committee of said bank, have made earnest efforts to rehabilitate the affairs of said bank so as to put it in a good, solvent condition, and enable it to re-open for business as a going concern, and petitioner feels that their

efforts in this direction have been successful, and that the affairs of said bank are now in such shape as to justify it to be re-opened for business as a going concern, as will be hereinafter shown.

That there is attached hereto as "Exhibit 1" a financial statement of the Peoples Bank & Trust Company as of date of its closing on December 24th, 1930, showing the total assets and liabilities to be $2,477,114.78.

Petitioner would further show that since said bank was closed for liquidation the bills payable of said bank, amounting to $427,500.00, principal sum; rediscounts, amounting to [fol. 6] $30,000.00, principal sum; making a total of $457,500.00, principal sum, together with the interest accrued thereon, and also all charges for expenses of collection by the correspondent banks holding same, have been paid, and the said Peoples Bank & Trust Company now owes no outstanding bills payable, nor is indebted for rediscounts. Petitioner would further show that at the time of the closing of the bank for liquidation there was on deposit in said bank for public moneys, which are preferred claims under this statute, approximately $200,000.00, and that these public moneys have been paid. Petitioner would further show that there are outstanding no preferred claims against said bank, except the claim of J. C. Williams Lumber Company and Vina Banking Company, which has been adjudged by the Chancery Court of Lee County to be a preference for the sum of $2,631.02, but appeal from which order is being prosecuted to the Supreme Court of Mississippi. That there are no other adjudged preferred claims, but that petitions for preference are on file which have not been determined by the court, and which in the judgment of petitioner are not preferred claims, and the total amount of which will not exceed $2,000.00.

II

Petitioner respectfully shows that the officers and directors and stockholders of Peoples Bank & Trust Company have agreed with the depositors on a plan for the re-opening of Peoples Bank & Trust Company as outlined in the Depositors Agreement, copy of which is hereto attached marked "Exhibit 2" and asked to be taken and considered as a part thereof.

[fol. 7] That said Depositors Agreement has been largely signed by depositors and creditors of Peoples Bank & Trust Company having deposits in and claims against Peoples Bank & Trust Company in excess of 75 per cent of the amount of deposits and claims against said bank (there being no deposits for public money) who have agreed to reduce the balance due them on their deposits to 25 per cent of the amount of such balances now outstanding to their credit, to be a charge against the reopened bank, and to be paid as follows:

(a) 5 per cent of the original amount (or 20 per cent of the depreciated amount) as of date of opening.

(b) Balance to be paid in installments whenever collections have been made from the assets taken over from the closed bank shall equal 5 per cent of the present outstanding deposits. All deferred payments are to be without interest.

The remaining 75 per cent of the balances of said deposit and claims is to be charged against said balances and is to be set up as special accounts, which are not to be obligations of the re-opened bank but are to participate pro rata in the distribution of certain assets designated as "pool assets" as collected, as hereinafter set forth. That the margin created by the charging out of the 75 per cent of the balances of deposits is to permit the Superintendent of Banks and the Directors of the Peoples Bank & Trust Company, with the approval of this court, to charge out of the assets of the bank loans and discounts and other items that are considered as uncollectible and of doubtful value at this time, with the understanding that the assets so charged out will be carried in a special account by the bank, under the jurisdiction of the Chancery Court of Lee County, Mississippi, and collected pro rata for the benefit of the depositors and creditors whose deposits and claims have been depreciated in accordance with the terms of the freezing agreement signed by the depositors and creditors. [fol. 8] That under the terms of said freezing agreement Peoples Bank & Trust Company undertakes to complete the liquidation of such assets charged out of said bank and known as the "pool assets," under the jurisdiction of the Chancery Court of Lee County, Mississippi, as a trust fund,

and subject to the supervision of the Superintendent of Banks, and to receive for the handling and collection of same 10 per cent of the amount which it collects, plus any attorney's fees and court costs incurred.

Petitioner further shows that there is a general law, passed by the 1932 Legislature of Mississippi, to enable closed banks to reopen for business, which provides that when three-fourths in number of the general depositors and creditors of such closed banks, or any number of general depositors and creditors therein, owning at least three-fourths of the deposits in or claims against such closed bank, agree to the re-opening of such bank and sign what is commonly termed a "freezing-of-deposits agreement," and the Superintendentof Banks feels that such closed bank is solvent under the terms of the reopening plan, and can operate with safety to the depositors and the public, and the Chancery Court of the County where the closed bank is situated, or the Chancellor in vacation, approves the plan for the reopening of such bank, the Superintendent of Banks may reopen the same, with the authority and approval of the Chancery Court under which said bank in liquidation is being administered, or the chancellor thereof in vacation.

Such Act further provides that the deposits of those depositors, who have not signed the freezing-of-deposits agreement, shall be paid to them at the same rate and at the same time as the deposits of the depositors who have signed the freezing agreement; and likewise that the same rule shall apply to the other common and unsecured credi-
[fol. 9] tors of the bank.

The Act further provides that if general depositors and creditors of such closed bank holding three-fourths of the deposits and claims in amount, agree to the reduction of their deposits and claims, the depositors and creditors who do not sign the freezing-of-deposits agreement and agree to the reduction of the amount thereof, shall have their deposits and claims reduced and frozen the same as those depositors and creditors who have signed the reduction and freezing-of-deposits agreement.

Petitioner would show to the court that general depositors and creditors having deposits and claims amounting to in excess of three-fourths of the amount of the general deposits and unsecured claims against said bank, have

signed the freezing-of-deposits agreement above referred to, and that therefore it is proper in this case under the law, for those depositors and creditors who have not signed the freezing-of-deposits agreement to have their deposits and claims reduced and frozen in accordance with the terms of the agreement, copy of which is hereto attached as "Exhibit 2."

That this Act further provides that the assets of the closed bank to which the general depositors and common creditors have a right to look for the payment of their claims shall not be diminished in any plan for the reopening of such bank, and that any assets that are charged out of the active assets of the bank shall be held by the bank in a special account to be collected and paid to all depositors and creditors on a pro rata basis, and petitioner respectfully shows that the plan for the re-opening of Peoples Bank & Trust Company contemplates, as aforesaid, that all assets charged out shall be held by the bank in a special [fol. 10] account to be collected for the use and benefit of all the depositors and creditors of the bank, and to be distributed pro rata to them.

That under said freezing agreement the remaining 75 per cent of balances now shown to the credit of depositors and creditors of Peoples Bank & Trust Company should be charged to said balances and placed in a special account to be handled as follows:

That the Superintendent of Banks is to make an examination of the bank and such assets of the bank as he may determine to be uncollectible at the present, and not proper to be carried in the reopened bank, are to be charged out of the bank and carried in a special account, or fund, to be managed and collected by the bank for the benefit of the depositors and creditors pro rata under such plan as may be approved by the Superintendent of Banks, the court and the directors of Peoples Bank & Trust Company, with the further understanding that such special fund, or account, and the assets from which it is derived, is to be administered under the jurisdiction of the Chancery Court of Lee County, Mississippi, as a trust fund subject to the supervision of the Superintendent of Banks. That this examination has been made, and the Superintendent of Banks is ready to complete said arrangement upon the reopening of the bank for business.

Petitioner would further show to the Court that in addition to the fact that the general depositors and creditors of the bank, holding more than three-fourths of the amount due by said bank for such deposits and claims, have agreed upon the plan for reopening the bank and have signed the freezing-of-deposits agreement; that they have likewise signed with said depositors agreement a petition to the Chancery Court of Lee County and to the Superintendent of Banks, asking that said bank be re-opened for business [fol. 11] according to said agreement, which petition appears on the back of the agreement signed by the depositors and creditors,

Petitioner would further show to the court that not only has said plan for reopening been approved by the general depositors and creditors holding more than three-fourths in interest in the deposits in and claims against said bank, but further that the plan for the re-opening of said bank is to the best interest of all the depositors and creditors of said bank, and in the judgment of petitioner more will be realized by said depositors and creditors by the re-opening of said bank according to said plan than would be realized by them by the continuation of the bank in liquidation. That said bank has been in liquidation for more than two years and four months, and the assets of said bank which were more readily to be collected have been realized upon, and that if the liquidation continues the relative cost of collection thereof will be increased without any compensating benefits from earnings that might be had from the operation of the bank. That the entire matter of the liquidation of Peoples Bank & Trust Company is now in the hands of the Chancery Court of Lee County, Mississippi, and is in virtual receivership; that the assets of said bank which are now in liquidation are being administered by the Chancery Court of Lee County, Mississippi, for the benefit of all depositors and creditors, and their interests in said assets are subject to the action of this court, and the only resource to which said depositors and creditors may look for the collection of their deposits and claims against said bank is from the assets of said bank, all of which are now under the jurisdiction of this court. Petitioner alleges that the interests of all depositors and creditors will be promoted by the reopening of the bank, according to the plan as set out in this petition, and offers

to make proof that such plan is for the best interest of all [fol. 12] parties, depositors, and creditors, and alleges that should the Court be satisfied that such plan is to the best interest of all depositors and creditors that it should, as acting for the depositors and creditors of said bank, authorize the reopening of said bank, according to the plans herein set out, and that the court has power so to do, as being to the best interest of all depositors and creditors, and bind them by the decree authorizing same.

III

Petitioner would show that in pursuance of the Depositors' Agreement, and for the purpose of re-opening said Peoples Bank & Trust Company, the Superintendent of Banks in connection with the directors of the Peoples Bank & Trust Company, have agreed upon the following plan for the consummation of the freezing agreement and re-opening of the Peoples Bank & Trust Company:

1. That a statement of the financial condition of the Peoples Bank & Trust Company of date of May 1st, 1933, as reflected by the books of the bank in liquidation, is hereto attached as "Exhibit 3", and asked to be taken and considered as a part of this petition.

2. That in accordance with the Depositors' Agreement, the Superintendent of Banks has made an examination of the assets of said bank in order to determine such of same as are uncollectible at present, and should be charged out of the bank and carried in a Special Fund, and in agreement with the Board of Directors of the bank, they have determined that certain assets of the bank should be charged out and carried in such Special Fund, statement of which is hereto attached as "Exhibit 4", and asked to [fol. 13] be taken and considered as a part hereof.

IV

Petitioner would respectfully show that when the Peoples Bank & Trust Company was closed for liquidation the statement showed capital stock of $200,000.00 and surplus of $75,000.00, but that in the plan of re-opening the capital stock is to be reduced to $55,000.00 and the surplus to $35,000.00, and that the necessary amendment to the Char-

ter of Peoples Bank & Trust Company has been applied for and petitioner has every reason to believe will be approved by the proper authorities authorizing the reduction of the capital stock of Peoples Bank & Trust Company to $55,000.00.

That in addition to this a Special Act of the Legislature was passed at the 1932 session authorizing the reduction of the capital stock of the Peoples Bank & Trust Company to $50,000.00. That this petition is filed pending the completion of the amendment to the charter of the Peoples Bank & Trust Company and decree is asked herein, subject to the approval of said reduction of capital stock, by the proper amendment.

That one of the terms of the freezing agreement signed by the depositors, is as follows:

"(6) It is further agreed that the Peoples Bank & Trust Company is to be re-opened with not less than $35,000.00 capital stock fully paid in cash, and in consideration of the benefits to accrue from the re-opening the undersigned, as a depositor or creditor, does hereby agree that such of the stockholders in the Peoples Bank & Trust Company as shall pay in cash to provide the capital stock for the re-opened bank, 50 per cent of the amount of their stock in the Peoples Bank & Trust Company at closing, shall be relieved and released from further liability to the depositors of the bank in liquidation, but that such stock-[fol. 14] holders as do not pay 50 per cent of their stock into the capital of the re-opened bank shall remain liable for the full amount of their stock liability, and which shall become a part of the assets known as the pool, to be administered as a trust hereinabove provided."

That the directors of the Peoples Bank & Trust Company have secured subscriptions from the stockholders in said bank whereby they have agreed to pay into the Peoples Bank & Trust Company, when authorized to re-open, $55,000.00 of capital stock as new money and other assets than is now carried in the statement of Peoples Bank & Trust Company in liquidation. That this $55,000.00 is now available and ready to be paid over to the Peoples Bank & Trust Company upon the reopening of said bank. That the plan contemplates the surrender and cancellation of all the outstanding stock in the Peoples Bank & Trust Company, and

the issuance of new certificates of stock in the Peoples Bank & Trust Company, being of the par value of $100.00 per share, being a total of 550 shares. That by the terms of the above Depositors' Agreement the depositors have waived their right to the double liability of the stockholders for the payment of their deposits in the closed bank, as to such as shall pay into the reopened bank 50% of the amount of stock originally held by them, but the stockholders in the reopened Peoples Bank & Trust Company, or any new deposits thereafter made in the reopened bank shall be liable for the deposits carried into the reopened Peoples Bank & Trust Company, or any new deposits thereafter made in the reopenend bank, as required by law. That the liability of such of the stockholders as do not pay 50% of the amount of their original stock into the reopened bank is to remain against them and they are to be liable therefor, which liability is to become an asset of the pool, and the collection thereof is to go towards the payment pro rata of the depositors and creditors whose claims are charged off 75%.

[fol. 15] That in the plan for the reopening of the bank $35,000.00 is being set up as surplus, which sum is to be derived from the assets of the bank in liquidation, and in addition thereto $10,000.00 from the assets of the bank in liquidation is to be set up as a reserve, and is being done by petitioner on the condition that the reopened bank is to agree to pay into the pool for the benefit of the 75% deposits charged off, all net earnings of said reopened bank after the payment of expenses for operation, taxes and reserve, as required by law, up to the sum of $7,500.00 per annum, until the entire amount of $45,000.00 has been repaid into the pool.

V

Petitioner respectfully shows that Peoples Bank & Trust Company in liquidation at this time has no bills payable to correspondent banks, and that there is therefore no amount which will have to be provided for this purpose in the reopening of the bank.

That the Peoples Bank & Trust Company, according to statement of May 1st, 1933, had on hand in cash as of that date $102,302.98, which is available for use in the reopening of the bank.

That it also has on hand $10,705.19 additional funds, which have been collected from stockholders in the Peoples Bank & Trust Company who have heretofore paid the full amount of their stock liability, but who, under the terms of the depositors agreement, are to be permitted to pay only 50% of the amount of their stock liability, and this amount [fol. 16] represents the amount paid by such stockholders over and above their 50% of stock liability, and is therefore to be returned to them, under the agreement with the depositors. This amount is therefore not to be considered as available for use in the reopened bank.

That when said bank reopens it would have a sufficient amount of money for its legal cash reserve, and to take care of its cash requirements from time to time, which cash requirements on the reopening, payable on demand, will be as follows:

Due on Deposit Account	$79,566.24
Due on Cashier's Checks Account	247.97
Due on Outstanding Drafts Account	3,039.95
Due on Common Claims Account	43.39
Total	$82,897.55
The total cash on hand available for the payment of the above obligations, which will be due upon the reopening of the bank will be	$102,302.98
From which, after deducting the full amount of the obligations which are due upon reopening as above outlined, being	$82,897.55
Leaves a balance of	$19,405.43

which will provide full reserve for the remaining deposits in the bank, all of which are deferred, and are obligations of the bank to be paid from the collection of the assets taken into the bank as and when such collections are made, as provided in the depositors agreement.

Petitioner believes that the Peoples Bank & Trust Company, if permitted to reopen in accordance with the plan [fol. 17] herein submitted, will be in a good, solvent condition as a bank, and will be able to operate with safety to its depositors and creditors, and to the public generally, and petitioner believes that it will so operate, and that such bank as a going concern will be to the best interest of all

the depositors and creditors of said bank and the community to be served by it.

IV

Petitioner would show that there is hereto attached as "Exhibit 5" the financial statement of Peoples Bank & Trust Company as it will appear as of the date of the opening; and also as "Exhibit 6" a financial statement as of the 1st day of May, 1933, and also as of date of opening, showing a reconcilement of the statement of the Peoples Bank & Trust Company in liquidation with the statement of the reopened bank at the time of reopening.

VII

Petitioner further shows that if Peoples Bank & Trust Company is permitted to reopen for business in accordance with the plan herein submitted, in his judgment it can safely operate in the future, and will serve its depositors, stockholders and the public generally, well, and will facilitate and promote business generally in the City of Tupelo, and the community served by it.

Petitioner is not now in position to say what percentage [fol. 18] will be received from the assets that are being placed in trust in what is termed the pool, to be collected for the benefit of its depositors and creditors whose deposits have been depreciated 75%, but such assets are to be handled by the Peoples Bank & Trust Company to be the best interest of said depositors and the very largest amount that can be realized thereon will be collected and used for the payment of the amounts due to such depositors and creditors pro rata.

VIII

Petitioner further shows that it is the understanding with the stockholders of Peoples Bank & Trust Company that no dividends will be paid to them on their stock until after the depositors and creditors whose deposits and claims have been frozen and depreciated have been paid the 25% agreed to be paid to them, and not then unless the condition of the bank justified it.

Petitioner further shows that the freezing of deposits plan will not apply to the depositors who deposit money in the Peoples Bank & Trust Company after its reopening,

nor as to any of those present depositors as to additional amounts deposited by them therein, and petitioner believes that such bank can and will operate with safety to all who may deal with it in the future, and should the court authorize petitioner to permit the Peoples Bank & Trust Company to reopen, the officers and directors of the Peoples Bank & Trust Company, acting for themselves and the stockholders, will make all necessary reports to the State Banking Department, and do everything necessary to be done to see [fol. 19] that said bank is properly operated as a good, sound banking institution.

IX

Petitioner would show to the court that there were approximately five thousand depositors in the Peoples Bank & Trust Company when it closed for liquidation, and there are a number of common creditors in addition. That all of these parties are interested in the results to be obtained from the Peoples Bank & Trust Company now in liquidation. The number of interested parties are so great that it would be impossible to personally serve with process each of them, in order to give them notice of the hearing of this petition, but that the interests of the general depositors and unsecured creditors are in common with the interests of the other said general depositors and unsecured creditors, and that which is to the best interest of the depositors and creditors as a class is to the best interest of each individual depositors and creditors. That it is the duty of the court to enter such decree as will be to the best interest of the depositors and creditors as a class, and the interests of such depositors and creditors can be fully protected by bringing into this court representatives of such classes as parties defendant to this petition. That likewise the depositors of said bank, shortly after the closing thereof for liquidation, selected nine representatives from their number to serve as a depositors committee, acting for the depositors and creditors of said bank as a class, and that said depositors committee has approved of the plan of re-opening of the bank, and petitioner asserts that it is his informa- [fol. 20] tion that it is the judgment of said depositors committee that it is to the best interest of the depositors and creditors that said bank should be re-opened according to the plan for the reopening as herein outlined.

Prayer

The premises considered, petitioner prays that the court may enter an order setting a day in vacation for the hearing of this petition, and likewise directing that a reasonable number of depositors and creditors of Peoples Bank & Trust Company be selected by this Court as representatives of said classes and that process issue for them, requiring them to appear on the date set for the hearing of this petition to show cause, if any they can, why the prayer of the petition should not be granted and the re-opening of the bank for business be authorized; and that likewise publication be made for all depositors and creditors and other interested parties, giving notice of the time and place of the hearing of this petition, and requiring that all interested parties show cause if any they can why the prayer of this petition should not be granted and the bank reopened for business, as hereinabove set out, and that on the hearing the court will inquire into the matters alleged in this petition, and all such matters relative to the bank in liquidation and the reopening thereof as may be right and proper, and that on the final consideration thereof the court may render a decree adjudging that it is to the best interest of all parties in interest as creditors of said bank that said bank be reopened for business, in accordance with the plan herein submitted to the court, and directing that said bank be re-
[fol. 21] opened; and if this be not the proper relief then petitioner prays for such other, further and more general relief as to the court may seem right and proper, and as in duty bound will ever pray, etc.

(Signed) J. S. Love, Superintendent of Banks of the State of Mississippi in charge of Peoples Bank & Trust Company, of Tupelo, Mississippi, in Liquidation. Flowers, Brown & Hester, by (Signed) C. R. Bolton, Solicitors for Petitioner.

[fol. 22] *Duly sworn to by J. S. Love. Jurat omitted in printing.*

[fol. 23] EXHIBIT "1" TO PETITION

Condensed Statement

Peoples Bank & Trust Company, Tupelo, Mississippi

December 24, 1930

Assets

Loans and Discounts	$1,818,733.09
Lumber Invoices	2,847.30
Overdrafts	61,822.48
Bonds	197,177.32
Bonds Bought under Repurchase Agreement	60,500.00
Guaranty Fund	12,500.00
Stocks	14,840.00
Banking House and Lot	55,000.00
Other Real Estate	125,037.11
Furniture and Fixtures	20,000.00
Due from Other Banks	62,487.38
Collection Account	279.72
Cash	23,085.81
Cash Items	6,963.69
Loss in Operations	15,800.88
	$2,477,114.78

Liabilities

Capital Stock	$200,000.00
Surplus	75,000.00
Individual Deposits	685,460.58
Savings Deposits	803,118.44
Time Certificates of Deposit	159,544.13
Cashier's Checks	10,699.30
Nettleton Branch	210.18
Union Planters National Bank & Trust Company (overdraft)	25,082.15
Bonds Sold under Repurchase Agreement	60,500.00
Rediscounts	30,000.00
Bills Payable	427,500.00
	$2,477,114.78

[fol. 24] EXHIBIT "2" TO PETITION

Depositors Agreement

Peoples Bank and Trust Company,

Tupelo, Mississippi

I, or we, ——, being a depositor or creditor of the Peoples Bank & Trust Company, of Tupelo, Mississippi, in the hands of J. S. Love, Superintendent of Banks, in charge of the liquidation thereof, as follows:

(1) Savings Account ..... $.....
(2) Checking Account .....

Total ..... $.....

In consideration of the reopening of said bank and the benefits to accrue to me, or us, by virtue thereof, hereby agree as follows:

(1) That said bank may be reopened under and subject to such plans as may meet with the approval of J. S. Love, Superintendent of Banks, the Chancery Court of Lee County, or the Chancellor (in vacation) and the directors of the Peoples Bank & Trust Company.

(2) That I, or we, are to receive 25 per cent of such balance as follows:

(a) 5 per cent of the original amount (or 20 per cent of the depreciated amount) as of date of reopening.

(b) Balance to be paid in installments whenever collections have been made from the assets taken over from the [fol. 25] closed bank shall equal 5 per cent of the present outstanding deposits. All deferred payments are to be without interest.

(3) That the remaining 75 per cent of my, or our, balance or credit is to be charged to my or our account, and set up in a special account to benefit from a trust fund hereinafter provided.

(4) That the Superintendent of Banks is to make an examination of the bank, and is to put into the reopened bank a sufficient amount of the assets of the bank now in

liquidation to insure the collection therefrom of sufficient funds to pay to the depositors and creditors of the bank now in liquidation the 25 per cent of their deposits and claims, which are to be assumed as a liability by the re-opened bank, and the remainder of the assets of the bank now in liquidation are to be charged out of the bank and carried into a special fund known as "Pool Assets," to be managed and collected by the reopened bank for my or our benefit and distributed pro rata, after a sufficient amount has been collected from the present assets of the bank to pay all depositors and creditors 25 per cent of their claims.

(5) That the said special fund designated as a pool and the assets from which it is derived is to be administered and distributed by the re-opened bank, under the jurisdiction of the Chancery Court of Lee County, Mississippi, as a trust fund and subject to the supervision of the Superintendent of Banks, and the said re-opened bank is to receive for the handling and collection of same 10 per cent of the amount which it collects, plus any Attorney's fees and court costs incurred.

(6) It is further agreed that the Peoples Bank & Trust Company is to be re-opened with not less than $35,000.00 [fol. 26] capital stock fully paid in cash, and in consideration of the benefits to accrue from the re-opening the undersigned, as a depositor or creditor, does hereby agree that such of the stockholders in the Peoples Bank & Trust Company as shall pay in cash to provide the capital stock for the re-opened bank—50 per cent of the amount of their stock in the Peoples Bank & Trust Company at closing, shall be relieved and released from further liability to the depositors of the bank in liquidation, but that such stockholders as do not pay 50 per cent of their stock into the capital of the re-opened bank shall remain liable for the full amount of their stock liability, and which shall become part of the assets known as the pool, to be administered as a trust herein above provided.

(7) Nothing in this agreement is to be constructed as relieving the stockholders in the re-opened bank from any liability under the law upon stockholders in anything that may occur in the operation of the re-opened bank.

(8) I hereby authorize the Superintendent of Banks of the State of Mississippi, with the approval of the Chancery

Court of Lee County, to act for me in further consummating the re-opening of the Peoples Bank & Trust Company, and in making contracts with the re-opened bank in conformity with this agreement.

Witness my signature, on this the — day of ——, 1933.

—— ——. Witness: —— ——.

[fol. 27] (Back of Depositors Agreement)

To the Honorable Chancery Court of Lee County, Miss., and Honorable J. S. Love, Superintendent of Banks of the State of Mississippi;

The undersigned, depositor in the Peoples Bank and Trust Company of Tupelo, Mississippi, hereby respectfully petition that said bank be reopened in accordance with the agreement which I have signed on the reverse hereof, which plan has been approved by the Depositors' Committee of said bank.

—— ——.

[fol. 28] EXHIBIT "3" TO PETITION

Statement

Peoples Bank & Trust Company, Tupelo, Mississippi

May 1st, 1933

Assets

Loans and Discounts		$956,816.72
Bonds		79,599.15
Expenses:		
General Expense	$9,364.84	
Salaries Paid	32,295.41	
Taxes Paid	34,035.25	
Farm Operations Expense	8,552.77	
Water and Light Expense	606.48	
Telephone and Telegraph Expense	1,285.52	
Insurance Paid	5,302.84	
Interest Paid	18,412.76	
		109,855.87
Tax Title Account		1,121.12
Overdrafts		4,041.08
Automobile Account		987.50
Live Stock Account		1,080.90
Stocks		37,468.60
Furniture and Fixtures		20,000.00
Real Estate		372,623.86
Bank Buildings		55,000.00
Bank of Tupelo	24,808.42	
Bank of Shannon	5,611.08	

Deposit Guaranty Bank & Trust Co., Jackson, Miss.	12,493.52	
First National Bank, Jackson, Miss.	223.64	
Merchants Bank & Trust Co., Jackson, Miss.	7,021.46	
Bank of Commerce, New Albany, Miss., Dividend Account #1	31,967.96	
Bank of Shannon, Shannon, Miss., Stockholders' Liability—Special Account	7.50	
Bank of Tupelo, Tupelo, Miss., Stockholders' Liability—Special Account	24,576.19	
Bank of Commerce, New Albany, Miss., Stockholders' Liability—Special Account	3,007.50	
		89,717.27
Stockholders' Liability		172,975.91
Cash Items		384.94
Total Assets		$1,901,672.92

Liabilities

Margin Account		$433,080.20
Earnings:		
Exchange	$159.89	
Interest on Notes	47,624.91	
Interest on Bonds	15,779.20	
Misc. Interest	3,201.48	
Rents	21,163.31	
		87,928.79
[fol. 29]		
Participating Certificates	$1,311,303.43	
Cashier's Checks	4,955.28	
Outstanding Drafts	60,755.35	
		$1,377,014.06
Small Accounts $5.00 and under		3,649.87
Total Liabilities		$1,901,672.92

[fol. 30] EXHIBIT "4" TO PETITION

Statement

Trust Funds or Pool Assets and Liabilities

Peoples Bank & Trust Company, Tupelo, Mississippi

As of Date of Re-opening of Peoples Bank and Trust Company

Assets

Bills Receivable and Equity in Bills Receivable	$759,111.08
Equity in Bond Account	31,610.15
Tax Title Account	1,121.12
Auto Account	987.50
Live Stock Account	1,080.90
Equity Stocks and Bonds Account	29,968.60
Equity Furniture and Fixtures Account	15,000.00

Equity in Bank Buildings Account	42,500.00
Equity in Real Estate Account	306,806.36
Special Cash Account	3,401.82
Cash Items	384.94
Stockholders' Liability Account	90,000.00
Total Assets	$1,281,972.47

Liabilities

Margin Account	$255,345.70
Deposit Account	976,703.37
Cashier's Checks Account	3,715.84
Outstanding Drafts	45,556.32
Common Claim Account	651.24
Total Liabilities	$1,281,972.47

[fol. 31] EXHIBIT "5" TO PETITION

Statement

Peoples Bank & Trust Company, Tupelo, Miss., as of Date of Re-opening

Assets

Bills Receivable	$216,892.08
Bonds	50,000.00
Overdrafts	4,101.94
Stocks and Bonds	7,500.00
Furniture and Fixtures (3)	5,000.00
Real Estate	68,917.50
Bank Buildings (3)	12,500.00
Cash on Hand and in Banks	102,302.98
Total Assets	$467,214.50

Liabilities

Capital Stock	$55,000.00
Surplus	35,000.00
Reserve	10,000.00
Special Reserve	12,039.06
Demand Deposit Account	79,566.24

Demand Cashier's Checks Account	247.97
Demand Drafts Outstanding Account	3,039.95
Demand Common Claims Account	43.39
Deferred Deposits and Claims:	
Deposits	258,683.69
Cashier's Checks	991.47
Drafts Outstanding	12,159.08
Common Claims	173.65
Total Liabilities	$467,214.50

[fol. 32] EXHIBIT "6" TO PETITION

Following is a Consolidated Statement showing as follows:

Column #1: Statement of Peoples Bank & Trust Company, Tupelo, Miss., in Liquidation, as of May 1st, 1933.

Column #2: Statement of Peoples Bank & Trust Company, Tupelo, Miss., in Liquidation, after giving effect to the $55,000.00 collected for the Capital Stock Structure.

Column #3: Statement showing the Assets and Liabilities of the Pool or Trust Fund.

Column #4: Statement of Peoples Bank & Trust Company, Tupelo, Miss., as will be reflected by its books on the date of re-opening of said bank.

	Column #1	Column #2	Column #3	Column #4
Assets:				
1. Bills Receivable	$956,816.72	$976,003.16	$759,111.08	$216,892.08
2. Bonds	79,599.15	81,610.15	31,610.15	50,000.00
3. Tax Title Account	1,121.12	1,121.12	1,121.12	.....
4. Overdrafts	4,041.08	4,041.08	.....	4,041.94
5. Automobile Account	987.50	987.50	987.50	.....
6. Live Stock Account	1,080.90	1,080.90	1,080.90	.....
7. Stocks and Bonds	37,468.60	37,468.60	29,968.60	7,500.00
8. Furniture and Fixtures	20,000.00	20,000.00	15,000.00	5,000.00
9. Bank Buildings	55,000.00	55,000.00	42,500.00	12,500.00
10. Real Estate	372,623.86	375,723.86	306,806.36	68,917.50
11. Cash and Due from Banks	89,717.27	102,302.98	.....	102,302.98
12. Special Cash Account	.....	3,401.82	3,401.82	.....
13. Cash Items	384.94	384.94	384.94	.....
14. Stockholders' Liabilities	172,975.91	145,000.00	90,000.00	.....
	$1,791,817.05	$1,804,126.11	$1,281,972.47	$467,214.50
Liabilities:				
15. Margin Account	$411,153.12	$411,153.12	$255,345.70	.....
16. Capital	.....	.....	.....	55,000.00
17. Surplus	.....	.....	.....	35,000.00
18. Reserve	.....	.....	.....	10,000.00
19. Special Reserve	.....	12,309.96	.....	12,309.06
20. Demand Deposit Account	.....	.....	.....	79,566.24
21. Participating Certifs	1,311,303.43	1,311,303.43	976,703.37	.....
22. Demand Cashier's Ck. Acct	.....	.....	.....	247.97
23. Cashier's Checks	4,955.28	4,955.28	3,715.84	.....
24. Demand Drafts Outstanding	.....	.....	.....	3,039.95
25. Outstanding Drafts	60,755.35	60,755.35	45,556.32	.....
26. Demand Common Claims	.....	.....	651.24	43.39
27. Small Deposits	3,649.87	3,649.87	.....	.....
28. Deferred Deposits	.....	.....	.....	.....
29. Deposit Account	.....	.....	.....	258,683.69
30. Cashier's Checks Acct	.....	.....	.....	991.47
31. Drafts Outstanding	.....	.....	.....	12,159.08
32. Common Claims	.....	.....	.....	173.65
	$1,791,817.05	$1,804,126.11	$1,281,972.47	$467,214.50

[fol. 33] IN CHANCERY COURT OF LEE COUNTY

No. 6583

[Title omitted]

DECREE AS TO HEARING

This day came on to be heard the petition of J. S. Love, Superintendent of Banks, in charge of Peoples Bank & Trust Company, of Tupelo, Mississippi, in liquidation, asking for authority to permit the said bank to re-open for business, and praying that a date for the hearing of the petition be set, and that notice to all depositors, creditors, and interested parties be given by publication, and it appearing to the Court that the prayer of the petition relative to fixing a date for hearing and publishing notice thereof should be sustained; it is therefore ordered by the court that said petition be heard before the Chancellor in vacation, in the office of the Chancery Clerk at the Court House in the City of Tupelo, Lee County, Mississippi, at 10 o'clock A. M. on the 15th day of May, 1933, and the Clerk is hereby directed to publish in the Tupelo Journal, a weekly newspaper published in Lee County, Mississippi, notice of the filing of this petition, addressed to all depositors, creditors, and other parties in interest, commanding them to appear before the undersigned as Chancellor in vacation at said time and place, to show cause, if any they can, why the prayer of the petition should not be granted.

It further appearing to the Court that petitioner has prayed for issuance of process for a reasonable number of the depositors and creditors of said bank, as representative of the depositors and creditors as a class to be selected by this court to show cause, if any they can, why the prayer of the petition should not be granted, and the court [fol. 34] hereby designates for service as representatives of depositors and creditors as a class the following parties who are depositors and creditors, to-wit:

Mrs. L. R. Higgs, Post Office Address, West Point, Miss.
W. L. Huffman, Post Office Address, Tupelo, Miss.
R. D. Jackson, Post Office Address, Shannon, Miss.
Henry Johnson, Guardian of Amos Reese, Post Office Address, Tupelo, Miss.

Mrs. R. A. King, Post Office Address, Shannon, Miss.
Mrs. Birdie Lowery McCord Dunn, Post Office Address, 2208 41st Street, Meridian, Miss.
Mrs. Della Posey, Post Office Address, R. F. D. 2, Nettleton, Miss.
Lamar Williams, Post Office Address, Tupelo, Miss.
Mrs. O. C. Doty, Post Office Address, Tupelo, Miss.
M. M. Foster, Post Office Address, Tupelo, Miss.
L. L. Bethay, Post Office Address, Tupelo, Miss.
J. W. Green, Post Office Address, R. F. D. 2, Tupelo, Miss.
International Agricultural Corporation, Post Office Address, Tupelo, Miss.
Mobile & Ohio R. R. Co., Ernest E. Norris, Receiver.
Standard Oil Company, of Kentucky.

And the clerk is directed to issue process for said parties as representatives of the depositors and creditors as a class, returnable on the date and at the place fixed for hearing, to show cause, if any they can, why the prayer of the petition should not be granted, and deliver the same to the proper officer for service.

Ordered, adjudged, and decreed in vacation this the 4th, day of May, 1933.

(Signed) James A. Finley, Chancellor.

[fol. 35] IN CHANCERY COURT OF LEE COUNTY

NOTICE AND PROOF OF PUBLICATION

STATE OF MISSISSIPPI,
Lee County:

Personally appeared before me, Notary Public, in and for said County and State, N. B. Buchanan, publisher of a newspaper printed and published in the City of Tupelo, Lee County, Mississippi, called The Tupelo Journal, who being duly sworn, deposes and says that the publication of a certain notice, a true copy of which is hereunto attached, has been made in said newspaper for three issues consecutively, to wit:

Vol. 61, No. 11, Date May 5, 1933.
Vol. 61, No. 12, Date May 9, 1933.
Vol. 61, No. 13, Date May 12, 1933.
Vol. I, No. —, Date —.

(Signed) N. B. Buchanan.

Witness my hand and seal this the 12 day of May, 1933. (Signed) Julia Hillebrand. My commission expires Jan. 3, 1934. (Seal.)

THE STATE OF MISSISSIPPI

No. 6583

In the Matter of the Liquidation of Peoples Bank & Trust Company, by J. S. Love, Superintendent of Banks

To All Depositors, Creditors and Other Parties in Interest in Said Bank:

You are hereby commanded to appear before the Honorable James A Finley, Chancellor of the Chancery Court of Lee County, Mississippi, on the 15th day of May, 1933, in the office of the Chancery Clerk, at the Court House in the City of Tupelo, Lee County, Mississippi, at 10 o'clock A. M. to show cause, if any you can, why the petition of J. S. Love, Superintendent of Banks in charge of Peoples [fol. 36] Bank & Trust Company, of Tupelo, Mississippi, in Liquidation, this day filed in said county, asked for authority to re-open said bank, should not be granted.

Done by order of the Honorable James A. Finley, Chancellor, this the 4th day of May, A. D. 1933.

Byron Long, Chancery Clerk.

Printer's Fee

To 159 Words at 4 Cents per word	$6.36
To Proof of Publication	.50
Total	$6.86

Paid. VSW. 5-12-33.

[fol. 37] IN CHANCERY COURT OF LEE COUNTY

In Vacation, May 13, 1933

[Title omitted]

OBJECTIONS

And now comes Mrs. Oscar C. Doty, a resident citizen of the State of Mississippi, City of Tupelo, and J. S. Wesson, a resident citizen of the City of Memphis, State of Tennessee, and object to the granting of the petition filed in this cause by J. S. Love, Superintendent of Banks, on May 4th, 1933, styled Petition for the Re-opening of the Peoples Bank and Trust Company, Tupelo, Mississippi, and ask that the prayer of said petition be denied and the relief asked for therein also be denied, and for cause of objection state the following:

That the said Mrs. Oscar C. Doty on January 7th, 1928, deposited in the Peoples Bank and Trust Company, in the savings department thereof, the sum of $14,000.00.

That she received no certificate of deposit for the same but received what is styled a "pass book," which said pass book is now in her possession and is No. 7279, and the original book itself will be produced at the hearing of this cause and the contents thereof is fully known to the petitioners in this case, as said bank during the time of existence issued many books of like kind, description and words; the only difference being the number of the same, and that from time to time, up to and including December 3rd, 1930, [fol. 38] she withdrew from said bank on account of said deposit, funds, until said deposit, together with the accumulated interest thereon, credited from time to time thereon, only amounted on December 31st, 1930, to the sum of $2,512.21, and that said amount is still due to her by said bank on account of said amount so deposited as aforesaid in said savings department.

That the said Mrs. Oscar C. Doty also had on deposit at the time the same went into the hands of the Superintendent of Banks for liquidation on what is known as "checking account" the sum of $——, all of which of said balance so on said checking account had been before that time deposited by her, the said Mrs. Oscar C. Doty, in the said Peoples Bank & Trust Company, subject to her check.

The said J. S. Wesson would show and represent that on July 24th, 1911, there was issued to him a pass book on savings department of the said Peoples Bank & Trust Company, showing that he, the said J. S. Wesson, at that time had on deposit in said savings department the sum of $4,134.73, and he would further show that from time to time up to the third day of January, 1923, he continued to make deposits of money in said bank in said savings department.

That on said date, the said J. S. Wesson had on deposit in said savings account in said bank the sum of $8,580.10; that said funds were deposited in said bank with the understanding and agreement that interest on the same at the rate of four per cent compounded quarterly was to be credited to the said J. S. Wesson; that he drew no checks against the same and the interest thereon on said sum was so credited in said book from time to time, and that on January 2nd, 1930, said sum so due to him, as aforesaid on said last named date, together with the interest at four [fol. 39] per cent credited thereon aggregated and was then due to the said J. S. Wesson the sum of $11,992.87, and that with the addition thereto interest that should have been credited on the same for the year 1930 makes a total amount now due to the said objector of $12,477.35, and that at the time the said bank went into the hands of the said J. S. Love, Superintendent of Banks, for liquidation, there was due to the said objector, J. S. Wesson, the said sum last named, together with four per cent interest per annum credited and compounded quarterly on said last named sum from January 2, 1930, to the date of the closing of said bank up until the 25th day of December, 1930.

That no deposit slips were issued to the said J. S. Wesson and other sums so deposited by him and said interest so credited to him aforesaid, were entered on his pass book #2544, the original of which will be produced at the hearing of this cause.

That all of the funds so deposited by both of the above named objectors to said petition were made many years before the closing of said bank for liquidation and many years before the passage by the Legislature of the State of Mississippi of Chapter 251, Senate Bill #511, of the Acts of the Legislature of the State of Mississippi of 1932, under which the petitioner, J. S. Love, is seeking to re-open the said Peoples Bank & Trust Company.

That all of said money so deposited and credited to each of your said objectors was deposited with the distinct understanding and agreement that the same would be repaid to them, upon the presentation of said book, together with check for the amount sought to be from time to time withdrawn, and that your said objectors made such deposits subject to the laws then in force and were then and still are entitled to all of the rights, remedies, ways and manners then provided by law for the enforcement of the payment of their said debt, and that insofar as Chapter 251, Senate [fol. 40] Bill 511, passed by the Legislature of the State of Mississippi at a session of 1932, seeks to enforce these objectors to accept less than the face value of their claim because others have agreed to accept such sums, the same is unconstitutional and of no force and effect, for the reason that it violates Subdivision 1, of Section 10, of the Constitution of the United States, which reads, as follows:

"No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin money; emit Bills of Credit; make anything but gold and silver coin — tender in payment of debts; pass any Bill of Attainder, ex post facto law, or law impairing the Obligation of Contracts, or grant any Title of Nobility."

And *who* violates Section 16 of Article 3 of the Constitution of the State of Mississipi.

And further that said law is unreasonable and should not be enforced or treated of any effect, for the reason that it attempts to give three fourths of the general depositors and creditors therein, or any number of the general depositors and creditors therein, provided that they own at least three-fourths of the deposits in or claims against such bank, agreed to the re-opening hereof and sign what is commonly termed "a freezing of deposits agreement", under the terms of which said law, stock-holders of a failed bank having money on deposit are attempted to be given the same petitioning or voting power as other depositors and for the further reason that under the terms of Section One thereof, it is possible for a limited number of stockholders in a bank, if they have large amounts on deposit to their credit, aggregating more than three-fourths of the deposits of the bank, to enforce upon the other de-

positors any kind of settlement they may see fit; and Chapter 251 is further unreasonable and unconstitutional in that under Section Two thereof, it attempts to exclude other banks holding bills payable of the closed banks, from the terms of the law and makes whatever debts against such closed bank, although unsecured, preferenec claims [fol. 41] over other depositors, or private citizens holding a note or notes of such failed bank for valuable consideration.

Your said objectors deny that the proposed settlement with the depositors is fair, just or to the best interest of said depositors or to the best interest of the community; they deny that it is to the best interest of the community for the Peoples Bank & Trust Company to be re-organized and opened, but on the contrary aver that under the present conditions of the business of the country, that by reason of the fact that there are already two banks in the City of Tupelo open and carrying on business, that it would be impossible for said Peoples Bank and Trust Company, if re-opened, to run on the basis of even breaking even, and that the only possible chance for it to succeed, or those who are attempting to re-open it, would be by reason of the profit they would make out of the assets now subject to the payment of the deposits of these objectors, and the other depositors in said bank, having claims against the same.

They aver that said settlement is unfair and unjust, for the reason that in the proposed schedules filed that over $200,000.00 of the assets of said bank are proposed to be turned over to the new bank in excess of what would be necessary to pay 25¢ on the dollar to the present depositors of said bank; that, in addition to this, they propose to pay back to the stockholders who have already paid their assessments under the law, about the sum of $10,000.00 which said money should be kept by the liquidating agent and administered according to law, and also the liability of those who have not paid, and for the further reason such additional stockholders as are liable under the law for the assessment of 100¢ on the dollar of their stock that are solvent, it is proposed to release them upon payment of such amount, and further that because said proposed settlement releases and takes away from these depositors [fol. 42] their rights to all of the money due under the law by the stockholders, in that it proposes for them only

to pay 50¢ on the dollar of the amount due by them and this is to be consumed or placed in the new bank by the way of capital stock which will be assets of the new bank.

It is further unfair and unjust to these objectors and the other depositors of said bank, for the reason that all of the assets turned over to the said new bank will be bearing interest until they are collected, and it is proposed only to pay to these objectors the sum of 25¢ of their deposit, the principal of said sum, without any interest, regardless of how long it may be before they receive their money.

It is further unfair and unjust for the reason that there is no provision made that in case all of the assets turned over to the new bank should be collected and regardless of what said collections may amount to in excess to the sum that will be necessary to pay the depositors of said bank 25¢ on the dollar, for any surplus or over-plus of said funds to be placed back in the trust fund for the use and benefit of the depositors.

It would be further detrimental to the interest of these objectors and all other depositors for said bank to be re-organized and opened for the reason and on account of the fact that said Peoples Bank and Trust Company through mismanagement, reckless loans and loans made contrary to law is in such bad repute throughout the district in which it did business that no re-organized bank, springing from the old bank, can ever have the confidence, faith and trust of the people, and will never be able to carry on any business.

It is further unjust and unfair for the reason that it is proposed in said settlement that *on* every asset now held by the Superintendent of Banks and the Liquidating Agent of said bank, which is yet uncollected, shall bear a charge [fol. 43] of ten per cent for collecting the same, regardless of the expense or trouble that may be necessary to collect it, and also for the payment of all attorney's fees expended in and about the collection of the same, regardless of whether said attorney's fees are provided for in such note and collected at the time the principal and interest is collected or not.

They object to said petition, for the further reason that no list is furnished of the assets proposed to be turned over to the new bank, and neither is any list of what is to

be turned over to the trust fund; they charge and aver that it is the object and purpose of this re-organization for a few people to get charge of the solvent assets of said bank and to make a large amount of money out of same, at the expense of these objectors and the other depositors in said bank.

Objectors deny that the so-called proposed trust fund, proposed to be set aside will be of any value whatever; that while said petition sets up that it will aggregate the sum of $—, no list of persons is furnished as to who is liable for the payment of said notes and bills receivable so set aside, and judging from the way that the real estate and bank building is handled and proposed to be set aside, objectors charge that all the notes or bills receivable, so intended to be placed in said trust fund, are worthless and of no value; that under the terms of said agreement and the way real estate is proposed to be set aside, the said reorganized bank can use the bank building free of rent and collect the rent and income from the other real estate, and under no offer or contract to place any of the income from said sources to the credit of the depositors in any way whatever, and the so-called equity proposed to be set aside with no voice on the part of the depositors as to the disposition of the same will be of no value whatever, either as to the bank building or any of the other real estate now owned and held, and the same is true of any proposed or so-called equity as to the furniture and fixtures.

[fol. 44] Objectors further object to the same, for the reason that said bank has been in liquidation nearly two and one-half years and the funds have been distributed and all of the assets which were bound up as collateral for the payment of any debts, and which were liable to be sacrificed have been gotten out of the hands of the pledge-s and can now be fully administered by the liquidating agent at a great deal less cost, and to a much greater advantage to these objectors and the other depositors of said bank than under the proposed agreement of settlement, and re-opening presented to this court in this cause.

Objectors charge and aver that the interest and income from the real estate and the interest on the bills receivable which are yet unpaid in the hands of said liquidating agent will be largely more than sufficient to pay any and all rea-

sonable necessary expenses that will have to be incurred in the collection of said bills receivable and the distribution of the other money among the depositors.

Objectors further charge and aver that said proposed settlement is unfair and unjust, for the reason that the cash now on hand and which can easily be collected from the collectible assets now in the hands of the Superintendent of Banks and the Liquidating Agent, will pay at present largely more to the depositors than is proposed to be paid out in cash at the present time by such re-opened bank.

Objectors further say that said proposed settlement is unfair, unjust and if allowed to go through would constitute a great wrong against these objectors and the other depositors, for the reason that under said proposed agreement the depositors would practically be furnishing the capital stock to the re-organizing of said bank on which to carry on the same, and they further say that it is unfair, unjust and wrong, and against the best interest of these objectors and the other depositors, for the reason that said re-organized bank in said proposed agreement does not guarantee the payment of any amount to these objectors, ex-
[fol. 45] cept 5% of their original deposit, or 20% of the reduced amount proposed to be paid to them, and that as to the balance of any such proposed payment to be made, the said new bank does not guarantee the payment of the same, or any part thereof, and if said new bank should fail to make money and all of the assets so turned over to it be consumed in expense, salaries, etc., for running such new bank; then said objectors and the other depositors would have no recourse for the balance of their reduced deposits, except such as the stockholders might be liable for under the law, and as could then be made out of them by execution.

These objectors deny that the officers and directors and stockholders of the Peoples Bank and Trust Company have ever had any agreement with these objectors on the plan of the re-opening of the Peoples Bank and Trust Company as outlined in the "Depositor's Agreement", copy of which is attached to the petition in this cause, but on the contrary aver that they have never agreed to anything about the re-opening of said bank, and have never had anything to do with any depositors' meeting or depositors' committees; they deny that 75% of the amount of deposits of the claims

against said bank, such as is required under the law under which said bank is now being attempted to be opened, have signed any such agreement freely and voluntarily, but charge and aver that if the same is so signed and inducement and special agreement have been made with a sufficient number of those signing the same for special benefits, in order to induce them so to do, as to render said agreement unlawful, irregular and of no force; because without such signatures a sufficient number of sign-es would not have been procured.

Objectors again deny that such closed bank is solvent under the terms of the re-opening plan and can operate with safety to the depositors and the public; they deny that under such plan proposed for the reopening of said bank that all the depositors and creditors of said bank will [fol. 46] realize more by the said reopening plan on their said deposits than they would realize if the affairs of said bank were continued in liquidation, and its business thus worked out and a final settlement made with the depositors.

They deny that the interest of all depositors and creditors will be promoted according to the plan as set out by the petition. Objectors aver that insofar as that clause of the petition is concerned which says that "in the plan for reopening of the bank, $35,000.00 is being set up as surplus which sum is to be derived from the assets of the bank in liquidation, and in addition thereto, $10,000.00 from the assets of the bank in liquidation is to be set up as reserve and is being done by petitioner on the condition that the reopened bank is to agree to pay into the pool, for the benefit of the 75%-charged off, all net earning of said reopened bank, after payment of expenses for operation, taxes, and reserve, as required by law, up to the sum of $75,000.00 per annum until the entire amount of $45,000.00 has been repaid into the pool," and the other proposed agreement as to the payment of no dividends by said bank, and for the happening of certain contingencies, amount to nothing, for none of said funds so received in the proposed agreement would be liable to the payment of these objectors' claims or those of any other depositors, and as to whether these objectors and other depositors would ever receive anything other than the five per cent to be paid when the bank is opened, would depend entirely on whether anything was ever collected from the balance of the assets

now belonging to the depositors that are left, after the proposed new bank takes what it and the Superintendent of Banks desire to give it.

Objectors do not know who the proposed new stockholders in said bank are to be, but they charge and aver that they consist of stockholders in the old bank, out of whom the amount due under the law on their stock can be made by execution, and that such proposal for reopening [fols. 47-51] has been gotten up by them, with a view to getting rid of fifty per cent of their liability, and placing the other fifty per cent in property which would belong to them. Or, in other words, it is a scheme, pure and simple, to have the depositors furnish sufficient capital to start a new bank and own no part of the same;

And, now having fully answered said petition, objectors pray that the prayer thereof be denied and same be dismissed.

(Signed) C. P. & S. H. Long, Solicitors for Objectors.

Duly sworn to by Mrs. Oscar C. Doty and J. S. Wesson, Jurat omitted in printing.

[fol. 52] IN CHANCERY COURT OF LEE COUNTY

In Vacation, May, 1933

[Title omitted]

PETITION OF DEPOSITORS COMMITTEE RELATIVE TO RE-OPENING

To the Chancery Court of the said County of Lee:

Now comes Dr. R. W. Carruth, A. J. Livingston, T. E. Burrow, A. E. Ray, C. B. Curlee, Sidney Gallagher, G. W. Roberts, W. H. Sumner and Dr. J. T. Dabbs, and would respectfully show unto the Court as follows:

That all the petitioners herein are depositors in the Peoples Bank & Trust Company, and were depositors at the time of the closing of the bank for liquidation, in December, 1930. That after the closing of said bank for liquidation public meetings were held of the depositors of said bank, and at said meetings representatives were selected

by the depositors to form a Depositors Committee, whose duty it was to look after the interests of the depositors in said bank, and to take such steps as in the judgment of the committee would be to the best interest of the depositors of said bank.

That said Depositors Committee were selected by electing three men as representatives of the depositors in the Tupelo territory, three men as representatives of the depositors in [fol. 53] the territory served by the Rienzi branch, and three men as representatives of the depositors in the territory served by the Nettleton branch, and all of said representatives to be representatives of the depositors of the bank as a whole. That petitioners herein were duly elected as such Depositors Committee. That said committee organized by electing Dr. R. W. Carruth, Chairman, and said committee has continued to function up to this date as a Depositors Committee, and has been generally recognized as such by the public and the general depositors of the Peoples Bank & Trust Company.

That the Depositors Committee has considered the question of the reopening of the Peoples Bank & Trust Company, and the plan proposed, therefor, and it is the judgment of the Depositors Committee that the plan for the reopening of said bank is to the best interest of the depositors and creditors of said bank, and that their interests would be promoted by the reopening of said bank, according to the plan which is embodied in the Depositors Agreement, which has been generally signed by depositors of Peoples Bank & Trust Company; that, believing said plan is to the best interest of the depositors, the committee has co-operated in the steps that have heretofore been taken for the reopening of the bank.

The undersigned petitioners, appearing as the Depositors Committee of the Peoples Bank & Trust Company in Liquidation, submit this petition to the Court and ask the Court to approve the plan for the re-opening of the bank as submitted in the petition filed by the Superintendent of Banks on May 4th, 1933, asking for authority to reopen the Peoples Bank & Trust Company for business. Petitioners as such Depositors Committee voluntarily enter their appearance in this Court, file this petition in support of the petition filed by the Superintendent of Banks, and pray that the Court may enter an order adjudging that it is to the best

[fols. 54 & 55] interest of the depositors and creditors of Peoples Bank & Trust Company that the bank be reopened, under the plan submitted in said petition, and directing the Superintendent of Banks to reopen the same as prayed for in his petition, and as in duty bound petitioners will ever pray, etc.

(Signed) R. W. Carruth, (Signed) T. E. Burrow,
(Signed) A. E. Ray, (Signed) T. G. W. Roberts,
(Signed) W. H. Sumner, (Signed) J. T. Dabbs,
(Signed) Sidney Gallaher, (Signed) C. B. Curlee,
(Signed) A. J. Livingston, Depositors Committee.

Duly sworn to by Dr. R. W. Carruth et al. Jurats omitted in printing.

[fol. 56] IN CHANCERY COURT OF LEE COUNTY

In Vacation, May 16, 1933

[Title omitted]

ANSWER, OBJECTIONS, ETC., OF MRS. O. C. DOTY ET AL.

Now comes Mrs. Oscar C. Doty of Tupelo, Mississippi; R. D. Jackson, of Lee County, Mississippi, and J. S. Wesson, of Memphis, Tennessee, and Mrs. Nannie McCarty, of Tupelo, Mississippi, and would show that at the time the Peoples Bank and Trust Company went into liquidation it was indebted to said parties as depositors in the sums agreed upon in the record in this cause, and also comes G. C. Mabry and S. Mabry, a partnership composed of G. C. and S. Mabry, operating and doing business under the firm name of G. C. and S. Mabry, both of said partners being resident citizens of Calhoun County, State of Mississippi, and comes Mrs. J. W. Brown, a resident citizen of Jackson, Hinds County, Mississippi, and as such would show unto the court that G. C. and S. Mabry are depositors in the Peoples Bank and Trust Company of Tupelo, Mississippi, in liquidation, in the sum of $——, which claim is, as they are informed and believe, a preference claim, in that the same is the proceeds of the sale of certain cotton or cotton warehouse receipts deposited with the said bank as collateral to secure a note due by them to said bank, and

said collateral was sold by said bank on the 24th day of December, 1930, in satisfaction of said note, at a time when the bank was hopelessly insolvent and known to be so by the officers and directors thereof, and the proceeds of the sale after the payment of the note aforesaid, were deposited or [fol. 57] attempted to be deposited in said bank by the officers and directors thereof, without the knowledge or consent of said Objectors;

That the said Mrs. J. W. Brown is a general depositor in her own right and name in the sum of $——, as shown by the books of the said Peoples Bank and Trust Company, and also a depositor of certain trust funds entrusted to her care, the property of the Baptist Missionary Society of the First Baptist Church of Tupelo, Mississippi, for which funds she is accountable to said Association, said trust deposit being the sum of $——, as shown by the books of said bank; also Mrs. Bessie Williams King, a resident citizen of Itawamba County, Mississippi, who is a depositor in the said Peoples Bank and Trust Company, in liquidation, the sum of $100.00, as shown by the books of said bank; and object to the granting of the prayer of petition by J. S. Love, Superintendent of Banks, asking that the Peoples Bank and Trust Company be allowed to re-open, and for cause of objections state the following:

That the same is attempted to be re-opened under Chapter 251 of Senate Bill 511 of the acts of the Legislature of the State of Mississippi of 1932, by reason of and on account of the fact, as alleged in said petition that depositors owning three-fourths of the amounts of the deposits of said bank have signed an agreement for the bank to be opened in accordance with the terms set forth in said petition.

That the funds of all said depositors were deposited in said bank prior to the passage of said act, above referred to, and that said bank was closed for liquidation prior to the passage thereof, and that all of said funds were deposited subject to the conditions named in the pass books of those who deposited in savings account, and under the terms of deposit slip issued to those depositing in the checking account, with the right on the part of all of said depositors to withdraw their funds, upon check from time [fol. 58] to time, as they saw fit, and with all the rights, privileges, remedies, and manners then provided by law for the enforcement of the collection of the same, and under the laws theretofore enacted for the benefit of depositors

and for the liquidation of banks, and that said statute under which they therefore charge said bank is attempting to be opened as to all of said objectors is unconstitutional, and of no force and effect, insofar as any rights on the part of said Superintendent of Banks to have said bank opened is involved, for the reason that the same violates Sub-division One of Section 10 of the Constitution of the United States, which reads as follows:

Section 10 of Article I provides among other things, "that no state shall pass any bill or law impairing the obligation of contracts."

And Section 16 of the Constitution of the State of Mississippi, which provides among other things, "that ex post facto law or laws impairing the obligation of contracts shall not be passed."

And also violative of the 14 Amendment of the Constitution of the United States and of Section 14 of the Constitution of the State of Mississippi of 1890; said sections, both as to the federal and state constitutions, provide among other things, "that no person shall be deprived of life, liberty, or property, except by due process of law", and the 14 Amendment of the Constitution of the United States further provides that "no state shall make or force any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the law."

[fol. 59] And also violates Section 17 of Article 3 of the Constitution of the State of Mississippi, which provides that "Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof, in a manner to be prescribed by law, and whenever an attempt is made to take private property for use alleged to be public, the question whether the others use by public shall be judicial question and as such determined without regard to legislative assertion that the use is public."

And further, because said law as written is unreasonable, unjust and should not be enforced, for the reason that it makes no distinction in the right to petition for composition or re-opening of the bank between ordinary depositors and stockholders of such bank having deposits therein, and

is further unreasonable and unjust in that it attempts to give correspondent banks the right to collect their money due them by the failed bank in full, and denies such rights to private citizens, partnerships or other corporations, who have loaned money to aid bank and hold their obligations therefor.

Your said objectors deny that the proposed settlement with the depositors is fair, just, or to the best interest of said depositors or the best interest of the community—

I. Because under the present conditions of the business of the country, by reason of the fact that there are already two banks in the City of Tupelo open and carrying on business, it will be impossible for said reorganized bank, if reopened, to even break even on expenses of running the same; and

II. Because it is intended and so set out that approximately $200,000.00 of the assets of the bank belonging to the depositors, when collected subject to distribution among [fol. 60] them, are proposed to be turned over to the new bank, in excess of what would be necessary to pay 25¢ on the dollar to the present depositors of such bank.

III. Because it is not proposed by the stockholders in said new bank to place any additions, by the way of capital stock, surplus, or anything else, other than the amounts to be taken from the present assets of said bank belonging to the depositors.

IV. Because it is proposed to remit one-half of the stockholders' liability of the solvent stockholders, who will pay into the reorganized bank the other half of their liability to be used as capital stock and in consideration of the payment of which they are to issue to the stockholders in the new bank certificates of stock therefor, and thus release the entire amount of the stockholders who are solvent, liability from the payment of the debts due by the old bank, in utter contravention of the terms of the law which provide expressly that said funds shall be used for no other purpose, other than for paying the depositors and thereby using the special trust fund created by law for the benefit of depositors in purchasing stock, for the benefit of a favored few," and

V. For the further reason that it is proposed to refund to certain favored stockholders more than $10,000.00 of the funds held in trust by the Superintendent of Banks for the benefit of depositors; said $10,000.00 having been collected from the stockholders on stockholders' liability, on account of the stock held by them in the Peoples Bank and Trust Company in liquidation.

VI. Because it is not proposed to pay to the depositors any interest on the amount proposed to be paid to them by the deferred payments, while all of the proposed assets to be — over by said new bank bear interest, or bring in income.

VII. Because no time is fixed whatever for any payment [fol. 61] other than the five per cent cash on the re-opening of said bank to be paid to the depositors.

VIII. For the further reason that it is proposed to transfer the title in and to stocks of the value of $37,468.60; furniture and fixtures of the value of $20,000.00, real estate of the value of $372,623.00, and bank buildings of the value of $55,000.00 to the re-opened or reorganized bank and to vest title to said property in said bank, with a side-agreement or understanding that the reorganized bank will agree upon the disposition of said property — retain for its own use and benefit from the sale of the stock and bonds, $7,500.00; furniture and fixtures, $5,000.00; real estate, $68,-917.50; three bank buildings, $12,500.00; and the court claiming that it will retain jurisdiction of said assets, while, as a matter of fact, and of law, the court can have and will have no jurisdiction over property, the title of which is vested in a going bank — was in receivership or liquidation, and that in law and in fact there will be nothing to prevent the disposing of said property by the new bank, after title is vested in said bank, regardless of the courts wishes or views.

XI. For the further reason it is proposed in the reorganization plan as follows:

"After the reopened bank is functioning it will be necessary for the new bank to purchase the furniture and fixtures at a price to be agreed upon and approved by the court, and the purchase price above $5,000.00 will go into

the pool for the benefit of the deferred portion of the deposits,"

when in truth and in fact the title to said property will have already invested in the said reopened bank, and if this scheme is carried out, it will eliminate competition in the disposing of the assets of the Peoples Bank and Trust Company in liquidation, and especially of the bank buildings and fixtures, and will result in a disposing of said property to the re-opened bank at a nominal price, whereas, objectors are informed and believe that the one bank build- [fol. 62] ing and fixtures in the town of Tupelo can now be disposed of at a cash price of $30,000.00, a sum greatly in excess of any sum that will ever be received from the reopened bank should it carry out the original plan, inasmuch as it would be violative of the law of the state for the said reopened bank to invest such a sum and percentage of its capital stock in a bank building in a town or city the size of Tupelo.

X. Because it is proposed in said plan for the new bank to charge a flat rate of ten per cent on all sums collected of the assets in the so-called trust fund, regardless of the expense or trouble tha- may be necessarily incurred in making such collections.

XI. It is unjust for the further reason that it is proposed to turn over to said reopened bank more than $425,000.00 of real estate for no consideration whatever and without any income or profits to be derived therefrom by the depositors, as shown from the following paragraph of the proposed plan:

"It is further contemplated that all rents and income coming from this real estate is to go into the reopened bank, as long as the reopened bank carries a real estate account on their books,"

and that it is proposed by the new bank to use the bank building and fixtures without paying any rent therefor to the depositors or creditors.

XII. It is not to the best interest of the depositors for the prayer of said petition to be granted, for the reason that as shown by the petition, there were over five thousand depositors in the failed bank and by reason of and on ac-

count of said failed bank, through mismanagement, reckless loans and loans made contrary to law to its officers, directors and kin-folks, etc., said failed bank is in such bad repute throughout the district in which it did business, which was a large district, that no reorganized bank springing from the old bank can ever have the confidence, faith and trust of the people, and will never be able to carry on any banking business profitably or successfully.

[fol. 63] XIII. It is further unfair and unjust for the reason that said Peoples Bank and Trust Company has been in liquidation nearly two and one half years and the depositors have paid the expenses that have been incurred in paying off correspondent banks and getting the assets of said bank back into the hands of the liquidating agent and from this date the expenses of such liquidation only such as are incurred that would be reasonable and necessary would be small, for the reason that all of the assets of the said bank belonging to the depositors are now in the hands of the liquidating agent and there is no chance for them to be sacrificed by pledgees or other creditors, and there has been paid prior to M-y 1, 1933, out of the funds of the depositors for the protection and preservation of the assets of the defunct bank, the sum of $109,855.87 for which said depositors will derive no benefit, other than a five per cent cash dividend to be paid out of the funds now on hand, belonging to them, and the possibility of receiving 20% if and when realized from the assets of the old bank by the new bank.

XIV. Objectors further show to the court that Chapter 251 of the Laws of Mississippi, 1932, is unconstitutional and void, and violative of the state and federal constitution, in that it provides for no notice of a hearing, and further that this court is without jurisdiction under any statute now existing in the state of Mississippi, providing for the fixing of a time, the issuing of process, and the hearing and determining of this cause in vacation, without the consent of all parties interest, and objectors here and now object to the hearing of this cause in vacation, and while objectors insist that such chapter is unconstitutional and void, if they are mistaken as to the constitutionality of said Section, still the plan proposed is in direct conflict with Section III of said Chapter, which is as follows:

[fol. 64] "That this act shall not be construed to give the Superintendent of Banks the right to diminish the assets of a closed bank to the prejudice of the depositors and creditors thereof, and any assets that may be charged as out as doubtful, or as losses, shall be held by the bank and collected for the benefit of its depositors and creditors, and all amounts so collected shall be held by the bank to be paid by them in accordance for the agreement of the repayment of their deposits and claims",

and the proposed plan now submitted to the court provides for the diminishing of the assets and the absolute transfer of several hundred thousand dollars of the assets of said bank, without any consideration whatever therefor, and does not provide for the prosecution of any meritorious claims that may exist against the officers and directors for the negligent, careless, or unlawful handling of the original bank's affairs, or the prosecution and recovery of any claims to which the depositors may be entitled against the various surety companies for and on account of liability, on account of the illegal acts of the officers and directors of said bank.

XV. Objectors would show to the court that they never agreed to anything about the reopening of said bank, and have never had anything to do with any of the depositors meetings and committees and that they deny that 75 per cent of the amount of the claims of the depositors against said bank, such as are required by law, have signed any such agreement freely and voluntarily, but charge and aver if the same is so signed that inducements and special agreements have been made with a sufficient number of those signing the same, in order to induce them so to do, as to render said agreement unlawful, irregular, and of no force, because without such signatures there would not be a sufficient number of signers as provided for by said Chapter 251, Acts of 1932.

XVI. They deny that such closed bank will be solvent under the terms of the reopening plan, and can operate with safety to the depositors and the public, and deny that the depositors will realize more by the said reopening plan [fol. 65] on their said deposit, than they would if the affairs of the bank had been continued in liquidation, and its busi-

ness worked out in an economical, honest and faithful effort to make settlement with its depositors.

XVII. Objectors further show to the court that no statute in the State of Mississippi authorizing the Superintendent of Banks or for this court to appoint a bank as liquidating agent, or to surrender the assets of a bank in liquidation to a reorganized bank to be administered on any terms or conditions, much less on the terms and conditions proposed in the plan now submitted; that the statute provides that a liquidating agent shall be appointed, and it is further provided for in Section 3766, of the Code of Mississippi, 1930, that the Superintendent of Banks shall employ a suitable and competent person to be General Attorney and the Superintendent of Banks has appointed a general attorney for the banking department, and Section 3767, Code of 1930, provides that the attorney employed under the provisions of the foregoing section shall do all the legal work necessary in the liquidation of the bank hereafter put into liquidation under the laws of the State of Mississippi.

XVIII. Objectors further show that by the proposed plan, no provision is made for carrying of — or other security for the faithful accounting of the assets or the faithful handling thereof, and for the making of any accounting or accounts to the court or the stockholders of said assets.

XIX. Objectors further show to the court that the proposed plan is inequitabe, unjust and unauthorized by law and results in impairing the obligation and contracts of your objectors and other depositors similarly situated in depriving them of their propery without due process of law or without compensation first having been made therefor, and they deny that they or any of the depositors, other than the stockholders in the new bank, will profit by the reopen- [fol. 66] ing of the proposed new bank.

XX. Objectors further show and charge the act to be that neither the Superintendent of Banks nor this court has any authority by law to remit or relieve stockholders their liabilitiy on account of stock in insolvent banks.

XXI. Objectors, G. C. and S. Mabry upon their own behalf respectfully show that they are entitled to have and receive as a preference claim out of the assets of the

Peoples Bank and Trust Company in liquidation the sum of $——, with six per cent therein from the 24th day of December, 1930, until the day of payment which sum they ask to be decreed as a preference claim against the assets of said bank.

XXII. In the proposed plan nothing is said about what disposition is to be made of the percentage to which the depositors of the Peoples Bank in liquidation are entitled to receive from the deposits protective fund which objectors are informed will be from two to five per cent of the total deposits and that under the proposed plan they will be deprived of the benefit of this fund, for the benefit of the reopened bank.

XXIII. Objectors would further show that they have requested a statement showing the notes, accounts, etc., to be placed in the pool for the benefit of depositors, but this list has not been funished by proponents, and neither has a list showing receipts and disbursements of the bank in liquidation, and expenses of liquidation, all of which was requested to be furnished and which the court ordered proponents to furnish to objectors, and objectors reserve unto themselves all rights to which they are entitled and waive nothing thereby, or by the filing of these objections, and again demand that they be furnished the information heretofore requested and which demand was approved by the court.

[fol. 67] And, objectors therefore pray that said petition be dismissed and the prayer thereof be denied.

(Signed) E. C. Sharp, (Signed) Rush H. Knox, (Signed) C. P. & S. H. Long, (Signed) Geo. T. & Chas. S. Mitchell, Solicitors for Objectors.

[fol. 68] In Chancery Court of Lee County

No. 6583

In the Matter of the Liquidation of Peoples Bank & Trust Company, of Tupelo, Mississippi, by J. S. Love, Superintendent of Banks

Decree Authorizing the Reopening of the Bank

This cause came on to be heard before the Chancellor in vacation on the 15th day of May, 1933, on the verified peti-

tion of J. S. Love, Superintendent of Banks of the State of Mississippi, in charge of the Peoples Bank & Trust Company, of Tupelo, Mississippi, in liquidation, outlining a plan for the reopening of the Peoples Bank & Trust Company, and praying for the approval of the Court for such plan for the reopening of said Peoples Bank & Trust Company; and also on decree heretofore rendered in this cause on May 4, 1933, setting the hearing for said May 15th, 1933, and directing the publishing of notice of said hearing to all depositors, creditors and other parties in interest, commanding them to appear on said May 15, 1933, to show cause why the prayer of the petition should not be granted; and also directing that certain parties named in the decree be summoned as representatives of the depositors and creditors as a class; proof of publication of said notice to depositors and creditors in the Tupelo Journal, a weekly newspaper published in the City of Tupelo, Lee County, Mississippi, on May 5th, 1933, May 9th, 1933, and May 12th, 1933, which proof of publication is filed in this cause; also upon service of process having been duly made upon each of the parties directed in the decree to be summoned as [fol. 69] representatives of the depositors and creditors as a class; and also upon petition of Dr. R. W. Carruth et al., being the Depositors Committee selected by the depositors in the Peoples Bank & Trust Company, and having acted as such since the closing of the bank, asking for the granting of the prayer of the petition of said Superintendent of Banks; also upon the objections filed by Mrs. Oscar C. Doty, J. S. Wesson, and Mrs. Nannie McCarty, R. D. Jackson, Mrs. Bessie Williams King, G. C. and S. Mabry, and Mrs. J. W. Brown; also Mrs. Birdie Lowry Dunn (nee McCord); also Lamar Williams and L. L. Bethay; and proof before the court; and the hearing of the matter was begun on said date and continued from day to day until the date of the signing of this decree, and upon the hearing of the matter permission of the court was given for the consolidation of the objections of G. C. and S. Mabry, Mrs. J. W. Brown, J. S. Wesson, Mrs. Oscar C. Doty and Mrs. Nannie McCarty; and the respondents, R. D. Jackson and Mrs. R. A. King, were permitted upon motion to join therein; and likewise upon motion of the objectors for more specific information, the petitioner filed a supplement to the original petition, giving the information in the schedules therein

contained, each of the parties filing objections being represented by attorney, and the court proceeded with the hearing of the matter, and evidence in support of the petition was presented to the court and opportunity was afforded to all parties to present evidence in support of their objections, the objectors offering none.

And thereafter the objectors G. C. and S. Mabry electing to withdraw their objection to the re-opening and refile their claim before the court as a petition for preference to be heard as a separate matter; and the objector Mrs. J. W. Brown withdrawing her objection; and likewise thereafter the objectors J. S. Wesson, R. D. Jackson and Mrs. Bessie [fol. 70] Williams King withdrawing their objections to the granting of said petition; and the court having considered the matter, and being of the opinion that the plan for the re-opening of the Peoples Bank & Trust Company as submitted by the petition of the Superintendent of Banks, and the supplement thereto, and as disclosed by the evidence produced before the Chancellor on this hearing, is just and equitable; and that the interest of the depositors, creditors and other parties in interest will be best promoted by the reopening of said bank in accordance with the plan as hereinafter decreed; and it further appearing to the court that said plan has the approval of the Superintendent of Banks of the State of Mississippi, it is therefore ordered by the court that the objections of Mrs. O. C. Doty, Mrs. Birdie Lowry McCord Dunn, Lamar Williams, L. L. Bethay and Mrs. Nannie McCarty are hereby overruled, and that the prayer of the petition seeking authority to reopen Peoples Bank & Trust Company be and the same is hereby granted.

1. It appearing to the court that a freezing-of-deposits agreement has been entered into with the depositors and creditors of said bank holding in excess of 75% in the amount of deposits and claims against said bank in accordance with the terms of the depositors agreement, copy of which is attached to the original petition as "Exhibit" and that said depositors and creditors have made said agreement in writing, duly signed by them, by the terms of which said agreement said depositors and creditors have agreed to reduce the deposits and claims due to them to 25% of the amount thereof, and have agreed to accept payment of said 25% of their deposits and claims as follows:

(a) 5 per cent of the original amount on the date of re-opening.

[fol. 71] (b) Balance to be paid in installments whenever collections have been made from the assets taken over from the closed bank shall equal 5 per cent of the present outstanding deposits. All deferred payments to be without interest.

And the remaining 75% of the deposits and claims now due to said depositors and creditors is to be charged out of the books of the bank as liabilities of the Peoples Bank & Trust Company, and is to be carried in a separate account for participation in certain assets of Peoples Bank & Trust Company, also to be charged off of the books, as hereinafter set forth.

And it further appearing to the court that under the general law passed by the Legislature of Mississippi at the 1932 session thereof, providing for the reopening of closed banks, it was provided that—upon agreement to freeze deposits signed by depositors and creditors holding claims against such closed bank in amount of 75% thereof—said freezing-of-deposits agreement should be binding upon all depositors and creditors of said bank, except those that have preferred deposits and claims, and that the required percentage of depositors and creditors in Peoples Bank & Trust Company have signed said freezing agreement, copy of which is attached to the petition as "Exhibit 2", and that by operation of law said agreement becomes effective as to all depositors and common creditors of said bank upon the reopening of said bank, with the approval of the Superintendent of Banks and the Chancery Court; it is hereby adjudged by the court that said conditions as provided in said law have been complied with in this cause, and that said bank upon reopening is entitled to deal with all depositors and creditors according to the terms of said depositors agreement, which has been signed by holders of in excess of 75% thereof.

[fol. 72] And it further appearing to the court, acting for all depositors and creditors of said bank as a whole, and after inquiry into said matter, and hearing of evidence relative thereto, and giving to all parties an opportunity to show cause why the same should not be done, that it is to

the best interest of all depositors and creditors of the Peoples Bank & Trust Company that their claims against said bank shall be reduced in accordance with said depositors agreement to 25% of the amount thereof; as against the bank which is herein authorized to re-open, and to be paid in accordance with the terms as herein set out, and that 75% of the amount of their claims and deposits be charged off of said deposits and claims and to be no longer a liability of the bank, which is to be re-opened, but is to be a charge against certain assets hereinafter provided to be charged out of the bank now in liquidation, and to be in what is termed the pool, to be handled in trust for the benefit of the said 75% of such depositors' and creditors' claims; and it also appearing to the court, after hearing the evidence and fully considering the plan proposed, that the depositors and creditors will realize a greater percentage on their claims under said reopening plan than would be realized by a continuance of the liquidation of said bank;

It is therefore ordered that, upon the re-opening of the Peoples Bank & Trust Company, it shall assume liability to its present depositors and creditors for 25% of the amount thereof, in cash to be available upon the date of reopening, and the remaining 20% as collected from assets herein provided to be placed in the reopened bank, whenever such collections shall equal 5% of the present outstanding deposits and claims, and the court directs that these payments of 5% shall be made as rapidly as collections may be reasonable made from such assets, and reserves to itself the right to inquire into the progress being made in the payment [fol. 73] of said remaining 20%, and enter such further orders directing the payment thereof as to the Court may seem to the best interest of the depositors and creditors of the Peoples Bank & Trust Company (except such as have been or may be adjudged to be preferred) be and they are hereby reduced to 25% of the present amount thereof, insofar as they are to be claims against the re-opened bank, but the 75% hereby charged off shall be a charge only against what is hereinafter termed pool assets.

It further appearing to the court that there are a large number of deposits in said bank for small amounts being $5.00 and less, to-wit:

3399	Checking Accounts, aggregating	$2,633.60
718	Savings Accounts, aggregating	$1,016.27

and that it would be more economical for all interested parties that said accounts should be paid in full, rather than to continue to carry them on the books of the bank and incur the expense of handling the same; it is therefore ordered by the Court as being to the best interest of all parties in interest that all of said accounts be made available in full, and thereby save the expense of calculating the percentage on each of the four thousand one hundred and seventeen of such small accounts and performing the necessary detail work in connection therewith, and the bank, when reopened, is hereby directed so to do.

2. It further appearing to the court that under the plan for the re-opening of said bank certain assets are to be set-over into the re-opened bank for the payment of the 25% of deposits and claims to be assumed by the reopened bank, and that a statement of such assets is attached to the original petition as "Exhibit 5"; which statement is further amplified by the supplemental exhibits filed thereto, and it appearing to the court that such statement, together with [fol. 74] the supplement explanatory thereof, is reasonable and just to all parties, and should be approved, it is therefore ordered as follows:

That "Exhibit 5" to the petition and scheduled explanatory thereof as shown by the supplement to the petition and which are headed as follows:

(a) Loans and discounts carried in the reopened bank;
(b) List of bonds held by Peoples Bank & Trust Company in which an equity is held for the pool assets;
(c) List of stock held by reopened bank in which there is an equity due pool assets;
(d) List of real estate held by the reopened bank in which there is an equity due the pool assets;

be recorded by the clerk on the minutes of this court immediately following the recordation of this decree.

It is ordered that the bills receivable listed in the supplement to the petition as "Loans and Discounts Carried in the Re-Opened Bank", the face value of which as carried on the books of the liquidation is $472,722.01, to which amount is to be added secured notes given on account of capital structure, $19,186.44, making a total of $491,708.45, which

are to be carried on the books of the re-opened bank as $216,892.08, and from which the re-opened bank is to collect the sum of $216,892.08, principal sum, and when so collected the remainder of said loans and discounts, and the balance due thereon, are to be transferred to the pool, to be held for the benefit of the 75% of deposits and claims charged off.

It is further ordered that bonds which are carried on the books of the liquidation at this time as $79,599.15, as shown by list of bonds which is included in the supplement to the original petition, headed "List of Bonds Held by Peoples [fol. 75] Bank & Trust Company in Which an Equity is Held for the Pool Assets," to which amount is to be added bonds aggregating $2,011.00, after giving effect to capital structure will give a total bond account aggregating $81,-610.15, which bonds are to be carried on the books of the re-opened bank as $50,000.00, from which bonds the re-opened bank is to collect the principal sum of $50,000.00, and the balance remaining after collection of said principal sum is to be transferred to the pool assets.

It is further ordered that over-drafts shown on the statement in "Exhibit 5" amount to $4,101.94, an itemized list of which is set out in the supplement to the original petition herein, is to be carried into the re-opened bank at said sum, there being no equity therein for the pool.

It is further ordered that the list of stocks and bonds set out in the supplement to the petition, which totals #37,468.60 shall be carried into the re-opened bank, and out of which the re-opened bank is to collect $7,500.00 principal sum, and after the collection of which the remainder is to be transferred to the pool.

It is further ordered that the furniture and fixtures of Peoples Bank & Trust Company at Tupelo, Nettleton and Rienzi, carried on the books of the liquidation as $20,000.00, shall be carried into the re-opened bank for the sum of $5,000.00, with the provision that all realized therefrom over and above said $5,000.00 shall be the property of the pool.

It is further ordered that the real estate as listed in the supplement to the petition, which is now being carried on the books of the liquidation at $372,62[illegible], to which amount there is to be added, after giving effect to the creation of the capital structure, $3,100.00, making a total real estate account of $375,723.86, which is to be carried into the re-

[fol. 76] opened bank at the sum of $68,917.50 *into the re-opened bank*, shall be paid into the pool.

It is further ordered that the three (3) bank buildings now owned by the bank in liquidation, to-wit, at Tupelo, Nettleton and Rienzi, which bank buildings are being carried on the books of the liquidation at $55,000.00, shall be carried into the reopened bank for the sum of $12,500.00, and all sums above said $12,500.00 to be realized therefrom shall be paid into the pool, for the benefit of the deposits and claims charged off.

It is further ordered that after the reopened bank shall have paid to its depositors and creditors the 25% assumed by it, that it shall make settlement with this Court for such equity in the furniture and fixtures and bank buildings as may appear to the court to be therein, for the benefit of the pool assets, with reservation to the Court of the right to direct the sale thereof, should the bank decline to pay the amount of equity fixed by the court.

It is further ordered that, with reference to the bank buildings and the furniture and fixtures, if, prior to the final payment of the 25% assumed by the bank upon re-opening, there shall be a bona fide offer for the purchase of any of said buildings or the furniture and fixtures, with reasonable guaranty of payment of such offer, then the re-opened bank is to either purchase said property for said price offered, or else sell the same for such offer, with the approval of this court, and pay the proceeds thereof over and above the $12,500.00 for bank buildings and the $5,000.00 for furniture and fixtures, into the pool, for the benefit of the depositors and creditors interested therein.

It is further ordered by the court that there shall be set over into the re-opened bank the cash on hand at the time of [fol. 77] re-opening, as of statement of May 1st, 1933, of the liquidation, which shows as follows:

In the Bank of Tupelo, Tupelo, Mississippi	$4,808.42
In the Bank of Shannon, Shannon, Mississippi	5,611.08
In Deposit Guaranty Bank & Trust Company, Jackson, Mississippi	12,493.52
First National Bank, Jackson, Mississippi	223.64
Merchants Bank & Trust Company, Jackson, Mississippi	7,021.46
Bank of Commerce, New Albany, Mississippi,	

Dividend Account No. 1		31,967.96
Bank of Shannon, Shannon, Mississippi, Stockholders' Liability—Special Account		7.50
Bank of Tupelo, Tupelo, Mississippi, Stockholders' Liability—Special Account		24,576.19
Bank of Commerce, New Albany, Mississippi, Stockholders' Liability—Special Account		3,007.50
Total as of Statement of May 1st, 1933		$89,717.27
From the above amounts the following accounts are to be eliminated:		
First National Bank, Jackson, Mississippi, account ..... which is to carried as an asset of the pool.	$223.64	
From the account of Bank of Shannon ..... which amount is also to be car- as an asset of the pool.	2,611.08	
Both of which are provided for in "Exhibit 4" to the petition and which to into the "pool" assets.		
From the Special Stockholders' Liability Account	$10,905.19	
Making a total of		$13,739.91
Leaving		$75,977.36
Cash carried into the re-opened bank from the liquidation, to which is to be added as follows:		
[fol. 78] Cash held in trust account of creation of capital stock structure		14,016.56
Cash collection account Union Planters National Bank & Trust Company, Collateral Notes, held as a Special Reserve Fund		12,309.06
Making a total cash account carried into the books of the re-opened bank, as shown by "Exhibit 5" to the original petition		102,302.98

which statement is permitted to be reconciled with any changes there have been therein since the statement of May 1st, 1933, which is attached to the original petition.

It is further ordered that such deposits in said banks be paid over by said banks to the re-opened Peoples Bank & Trust Company, said funds being hereby adjudged to be preference funds in said respective banks, to be paid at once, and this decree shall be the warrant and authority for said banks to pay over said funds to the Peoples Bank & Trust Company when re-opened, and take its receipt therefor in release thereof.

It is further ordered by the Court with reference to such assets as are hereinabove directed to be set over into the re-opened bank, that the reopened bank is to have the interest collected on said notes and bonds up until the time when it shall have received the full principal sum for which said notes and bonds are taken into the re-opened bank, but is to make no other charge for the collection and liquidation of the same while in its hands as assets of the re-opened bank.

As to the stocks and bonds taken into the reopened bank, it is ordered that it shall receive all dividends and earnings therefrom. It is further ordered that when the re-opened [fol. 79] bank shall have realized the sum of $7,500.00 from the sale of any portion of said stocks and bonds that the remainder of said stocks and bonds shall be transferred into the pool, and handled in the same manner as other pool assets.

As to the real estate taken into the re-opened bank it is ordered that the re-opened bank is to receive all rents, issues and earnings therefrom, and that the re-opened bank is to pay taxes, insurance and up-keep of said property, and that this arrangement is to continue until the re-opened bank has realized from the sale of any part of said real estate the sum of $68,917.50, the balance of said real estate, after this amount has been realized from the sale thereof, is to be transferred into the pool, and handled in the same manner as other pool assets.

The re-opened bank is not to receive any commission from the sale of said real estate, stocks or bonds, nor shall it sell any of said real estate, stocks or bonds in which the pool has an interest without the approval of this court.

It is further ordered that as to the notes taken into the re-opened bank in which the pool has any interest, it shall not settle same for less than the principal balance due thereon, without the approval of this court.

It is further ordered that in return for the receipt of the above assets to be set over into the reopened bank, the re-opened bank shall assume liability for 25% of the principal amount of its common deposits and claims, including outstanding drafts and cashier's checks, plus liability for payment of all deposits of $5.00 and under in full, which liability is to be paid according to the terms of the freezing agreement hereinabove set out, to-wit:

Demand Deposits account	$79,566.24
Demand Cashier's Checks Account	247.97
Demand Outstanding Drafts Account	3,039.95
Demand Common Claims Account	43.39

[fol. 80] which amounts represent the 5% of said accounts which are to be made available upon re-opening, plus the small accounts of $5.00 and under, and such preferred claims as have been directed to be paid by this Court, and from which no appeal has been prosecuted.

The re-opened bank is to assume liability for the payment of deferred deposits and claims as follows:

Deposits	$258,683.69
Cashier's Checks	991.47
Drafts Outstanding	12,159.08
Common Claims	173.65

which deferred deposits and claims are the remaining 20% assumed; and are to be paid as collections are made out of the assets as above directed to be set over in the re-opened bank, and as provided by the freezing-of-deposits agreement.

And it further appearing to the court that after the setting over into the re-opened bank of the above assets for the payment of the 25% of deposits and claims assumed by said re-opened bank, there will remain other assets of said bank now in liquidation which are to be held for the benefit of the claims of depositors and creditors which are not to be assumed as a liability by the re-opened bank, such assets to be held in trust as a pool, statement of which assets and the liabilities against the same being attached to the

original petition as "Exhibit 4"; and itemized statement of each of the items in said statement being shown in the schedules in the supplement to the original petition;

It is therefore ordered that all of said assets as shown in the statement on "Exhibit 4", and the schedules explanatory thereof, be held by the re-opened bank in trust for the benefit of the depositors and creditors to the extent of the 75% of whose claims are not being assumed as a liability by the re-opened bank, and that said items of assets as shown in statement on "Exhibit 4" be charged out of the present statement of the liquidation.

[fol. 81] It is likewise ordered that there be charged as liabilities against said assets the 75% of deposits and claims, including Cashier's checks, outstanding drafts and common claims which are not to be assumed as a liability of the re-opened bank, and it is directed that the re-opened bank shall receive in trust for the separate account of the 75% of deposits, outstanding drafts, Cashier's checks and other claims charged off as above provided, the assets as referred to in the statement marked "Exhibit 4" to the petition, and to administer the same in trust, under the jurisdiction of the Chancery Court of Lee County, Mississippi;

And said re-opened bank is hereby directed to file an inventory of such assets in the Chancery Court of Lee County, Mississippi, and submit itself to the jurisdiction of said Court for the handling of the same in trust; and also to file with said inventory a list of the depositors and creditors who are entitled to participate in said assets, and the amount of their claims, as basis for their participation, being for the 75% of their deposits and claims charged off, and the said re-opened bank is hereby granted until July 1st, 1933, as the time within which to file said inventory, acknowledgment of trust and list of beneficiaries therein. The legal title to the assets above referred to is to be held in trust by The Peoples Bank & Trust Company, with the right in it to take all necessary steps for the collection thereof in the converting of same into cash, and there shall be no liability upon the part of persons dealing with it relative thereto to see to the proper application of the proceeds thereof, and the only obligation relative thereto shall be upon the Peoples Bank & Trust Company for accounting for the proper application of said trust; the right of

the bank to deal with said assets to be free and unrestricted, except as hereinabove provided for the sale of real estate, [fol. 82] or the settlement of any notes or bonds for less than the principal balance due thereon.

It is further ordered that as to the assets held in the pool in trust for depositors and creditors, the said bank shall annually report to this court of its handling of same. It is further ordered by the court that for the handling and collection of said assets which are held in the pool, the said bank is to receive for its expense and compensation in handling same the sum of 10% of all amounts collected on said notes and bills receivable; and also the issues and profits from any of said property, but is not to receive 10% of any amounts received from the sale of real estate, stocks or bonds belonging to the pool.

It is further provided that in addition to the 10%, the bank is also to be re-imbursed for any attorney's fees and court costs which may properly have been expended with reference to the collection of said notes and bills receivable, or with reference to the preservation and protection of any of said properties, said attorney's fees and court costs to be approved by this court.

It is further ordered that all repairs and expenses incurred in the preservation of the property taken into the pool occasioned by acts beyond the control of the reopened bank shall be charg-able against the assets of the pool.

The Superintendent of Banks of the State of Mississippi is hereby appointed the agent of this court for the purpose of supervising said trust, and he shall require the Peoples Bank & Trust Company to make annual account of said trust to the Chancery Court of Lee County, Mississippi, and shall have the right to examine said trust fund and assets, and is hereby invested with authority to act in said matter for the benefit of the depositors and creditors inter- [fol. 83] ested therein, in requiring all things to be done that may be necessary for the safeguarding of their interests.

It further appearing to the court that in the proposed statement for the re-opening of the Peoples Bank & Trust Company as shown by "Exhibit 5," there is carried in the liabilities an item designated as Special Reserve, $12,309.06, and that this fund is being held on account of some suits that are pending or threatened against the Union Planters

National Bank & Trust Company, of Memphis, Tennessee, on account of claims growing out of transactions through said Union Planters National Bank & Trust Company with the Peoples Bank & Trust Company, wherein said claimants are seeking to hold liable therefor said Union Planters National Bank & Trust Company, and the Union Planters National Bank & Trust Company after the bills payable due to it by the Peoples Bank & Trust Company had been paid in full has continued to hold said collateral, under its collateral agreement, to indemnify it against loss on account of said suits, or threatened suits, and that said suits or claims are indirectly claims against the Peoples Bank & Trust Company, which if they shall have to be paid by the said Union Planters National Bank & Trust Company, will be a charge upon the assets of the Peoples Bank & Trust Company;

It is therefore ordered that the re-opened bank be permitted to carry as a special reserve against said claims through the Union Planters National Bank & Trust Company, the said sum of $12,309.06, as set up in the statement, and to provide for which the amounts carried in the assets of the re-opened bank have been increased to that extent, and it is ordered that there be a charge against the assets carried into the re-opened bank for the benefit of the pool of such amounts as may remain in said Special Reserve of [fol. 84] $12,309.06, after the payment of such amount as may be required to indemnify the said Union Planters National Bank & Trust Company, for loss on account of said suits or claims, and for which it has been holding collateral of the Peoples Bank & Trust Company in liquidation.

It further appearing to the court that there has been filed in this court certain claims for preference as against the bank in liquidation, and which have not been finally adjudicated and that said claims can only be considered as not being preferred claims in the re-opened bank until their preferred character has been finally established; it is therefore ordered by the court that the re-opening of the bank proceed as if said claims were not preferred claims, and the court hereby retains jurisdiction over all of said claims for preference to be determined by it, and directs that as to such claims as it may hereafter adjudge to be preferred claims and direct that the bank pay the same in full, that the reopened bank be reimbursed as a prior claim

against the assets going into the pool for such amount as may be adjudged by this court to be due over and above the amount which is assumed by said re-opened bank on said claims as being common claims.

It is further ordered that the Superintendent of Banks continue to litigate said claims in this court as if the bank were still in liquidation, and the court retains jurisdiction over the determination thereof as heretofore.

It appearing to the court that there has heretofore been litigated before this court the claim of J. C. Williams Lumber Company and Vina Banking Company for a preference against the assets of the bank in liquidation, and this court has rendered a decree on the 14th day of January, 1933, adjudging the same to be a preference for the sum of $2,631.02, and the Superintendent of Banks desiring an [fol. 85] appeal therefrom to the Supreme Court of the State of Mississippi, and the same being undetermined, it is ordered by the court that the re-opened bank assume at this time liability for said claim only as a non-preferred claim, and if the same shall be adjudged by the Supreme Court to be a preferred claim then that the re-opened bank have a claim as above provided against the assets of the pool for the amount thereof over and above the amount assumed as a common claim.

It is further ordered that this appeal to the Supreme Court on this claim be prosecuted in the name of the Superintendent of Banks, and as such he is authorized to prosecute said appeal as a public officer with supersedeas, without being required to give bond, the assets of the pool being held therefor for the amount due over and above the amount due thereon as a common claim.

It further appearing to the court that shortly after the closing of the bank for liquidation due notice was given as required by law to all parties directing them to file their claims with the Superintendent of Banks in charge of the liquidation of Peoples Bank & Trust Company; it is therefore ordered that as to all claims not heretofore filed the same shall be considered as forever barred, and shall not be a liability against either the pool nor the re-opened bank, and that all claims now pending for deposits or otherwise upon which no petition has yet been filed to have the same adjudged a preference, that the ame shall be considered and hereby declared to be common claims, to share on the

same basis of all other general depositors and creditors of the bank. The bank of Tupelo having heretofore notified the Liquidating Agent of their intention to file a claim for preference for not exceeding $6,708.25 the right on its part to file such claim is hereby expressly granted and reserved. [fol. 86] It further appearing to the court that at the time of the closing of the Peoples Bank & Trust Company for liquidation, it had a capital stock of $200,000.00, and that by the terms of the depositors agreement which has been signed by the holders of in excess of 75% of the deposits and claims of said bank, it is provided that the bank might be re-opened with capital of not less than $35,000.00 fully paid in cash, and that in consideration of the benefits to accrue from the re-opening of the bank to the depositors and creditors, that such of the stockholders as shall pay in cash to provide the capital for the re-opened bank 50% of the amount of their stock in the Peoples Bank & Trust Company at closing, shall be relieved and released from further liability to the depositors as such stockholders, but that such stockholders as do not pay the 50% into the capital of the new bank shall remain liable for the full amount of their stock liability, which shall become part of the assets known as the pool; and it appearing to the court from the testimony before the court that holders of more than 75% of the deposits in said bank have agreed to said provision; and further that the depositors will realize more out of the assets of the bank in liquidation by the re-opening of the bank under the plan as outlined in the petition than they would from the continuance of it in liquidation, and that it is to the best interest of the depositors that this provision of the depositors agreement be carried out and such of the stockholders as shall pay in cash to become stockholders in the re-opened bank 50% of the amount of their stock in the bank at the time of the closing, and thereby becoming liable under the statute for a like amount for the payment of the liabilities assumed, shall be relieved and released from further liability on account of their having been stockholders in the bank at the time of the closing thereof. And the court finding from the evidence that much stock has been provided in this way from whom collections could not probably be had under a judgment, and [fol. 87] that it is to the best interest of the depositors that said bank re-open rather than to undertake to pursue the

claim for stock liability against such as have provided new assets as capital for the re-opened bank: and it further appearing to the court that subscriptions have been had and that new assets in providing for capital stock to the extent of $55,000.00 is in hand to provide the capital for the re-opened bank, upon its authorization so to do by this court, it is hereby ordered by the court that such of the stockholders in the Peoples Bank & Trust Companny at the time it closed for liquidation as shall pay into the re-opened bank to provide capital therefor, to the extent of $55,000.00, on the re-opening thereof shall be released from further liability as stockholders in the bank at the time it closed for liquidation, but nothing herein is to be construed as relieving them of their statutory liability for the amount of capital which they provide for the re-opened bank, and which statutory liability is to include not only the deposits which shall hereafter be received into the bank when re-opened, but also the 25% of deposits which are assumed as a liability by the re-opened bank.

It further appearing to the court that some of the stockholders in the Peoples Bank & Trust Company when it closed for liquidation have heretofore paid into the hands of the Superintendent of Banks in charge of the liquidation thereof more than 50% of the amount of their stock, and he has collected from said stockholders $9,765.17 more than the 50% of their original stock, and that under the above arrangement for the providing of capital stock for the re-opened bank, those who pay into the capital stock 50% of their stock in the bank at the time of its closing are released from further liability; it is therefore ordered that the Superintendent of Banks be and he is hereby directed to return to such of the stockholders as have paid to him more than 50% of their stock liability such amounts [fol. 88] as he may have received above said 50%.

It further appearing to the court that as to a number of stockholders, judgments have been heretofore rendered and enrolled but have not been collected, the Superintendent of Banks is hereby authorized to cancel such judgments as have been rendered against stockholders who shall have paid 50% into the re-opened bank to provide capital therefor. He is likewise authorized to release to such stockholders as have provided capital for the reopened bank to the extent of 50% of their original stock, any securities he

may have taken from such stockholders to secure the payment of their statutory liability.

The above provisions of this decree are entered because of the finding of the court that it is to the best interest of all of the depositors that the same be done, and it appears that more will be realized for them thereby.

It appearing to the court that all stockholders have been notified of this plan for the re-opening of the bank and the providing of new capital stock, and given an opportunity to avail themselves of it, and that stockholders holding stock of the face value of $90,000.00 as of the date of the closing of the bank for liquidation have not elected to provide new assets for the capital of the re-opened bank, and only such as should do so being agreed to be released, by the depositors agreement; it is therefore ordered that as to such stockholders as have not provided 50% of the original of the amount of their former stock as new assets for the re-opened bank, shall remain liable for their double statutory liability, and such judgments as shall have been, or shall be rendered against said stockholders, and the amounts collected thereon, shall become assets of the pool for the benefit of the depositors who participate therein to the extent of 75% of their present deposits.

[fol. 89] It further appearing to the court that an amendment has been had to the Charter of Incorporation of the Peoples Bank & Trust Company, whereby the capital stock of said corporation has been authorized to be reduced from $200,000.00 to $55,000.00, and that the full amount of the capital of the bank at the time it closed for liquidation has been consumed, and that it has been determined by the Superintendent of Banks that the interest of all old stockholders at the time the Peoples Bank & Trust Company closed for liquidation has been consumed; and further that they have been called on for their statutory double liability, and that the old certificates of stock should be cancelled, it is therefore ordered that all certificates of stock heretofore issued be and the same are hereby directed to be cancelled, and surrendered to the proper officer of the corporation, and that the capital of the corporation shall henceforth be only such amount as has been paid in as new assets, and that all old stockholders who have not provided the assets for new capital stock, are declared to have no interest in the assets of the corporation.

It further appearing to the court that under the amendment to the Charter of incorporation of Peoples Bank & Trust Company, the name of the corporation has been changed to The Peoples Bank & Trust Company; it is therefore ordered that said corporation shall henceforth be known as The Peoples Bank & Trust Company, and the certificates of stock in the re-opened bank shall be issued in the name of The Peoples Bank & Trust Company.

It further appearing that in the plan for re-opening it has been provided by the Superintendent of Banks under the authority granted by Section 8 of the Depositors Agreement that additional assets should be placed in the [fol. 90] re-opened bank to provide surplus to the extent of $35,000.00, and reserves to the estent of $10,00.00, with the provision that the same should be repaid into the pool out of the earnings of the re-opened bank, all earnings after the payment of expenses to the amount of $7,500.00 per year, to be paid into the pool for the repayment of said amounts so provided for surplus and reserve, without interest; and it appearing to the court that this is to the best interest of the depositors and creditors of the bank, it is therefore ordered that said plan of the Superintendent of Banks therefor, be and the same is hereby approved but with the provision that no dividends are to be paid to the stockholders in the re-opened bank until the full amount of said $45,000.00 has been paid into the pool; and also the amount of 25% of deposits and claims assumed by the bank upon re-opening has been paid in full.

It is further ordered that all assets taken over by the re-opened bank are liable for the payment of the claims of the depositors and creditors for the twenty-five per cent liability assumed by the reopened bank.

It is further ordered by the court that all expenses incurred in the liquidation of Peoples Bank & Trust Company and in the re-opening of said bank up to the date of the re-opening, shall be paid out of the assets taken into the pool, which expenses shall include the costs incurred in this cause, and in any other legal proceedings had in the liquidation, and which expenses are to be a charge against the assets taken into the pool, and should the re-opened bank pay any such expenses it is authorized to be re-imbursed therefor from the pool, and it is therefore so ordered by the court.

[fol. 91] It appearing to the court that in the plan herein outlined the Peoples Bank & Trust Company can be re-opened as a solvent banking institution, and that it will have sufficient cash upon reopening to meet the required legal reserve, and operate in the future with safety to all concerned, and that it is to the best interest of all of the depositors and creditors and other parties in interest in the Peoples Bank & Trust Company now in liquidation that it should be re-opened; it is therefore ordered that the Superintendent of Banks be and he is hereby authorized to permit The Peoples Bank & Trust Company to re-open for business and to relieve it of liability to its depositors and creditors except for the payment of the 25% of deposits and claims as are agreed to be assumed; and for the filing of the proper petition in the Chancery Court of Lee County, Mississippi, submitting itself to its jurisdiction for the handling in trust of the assets hereinabove referred to as being placed in the pool, and the Superintendent of Banks is authorized to make all necessary contracts and agreements for the purpose of carrying out the terms of this decree, and after seeing that the terms thereof have been carried out and satisfying himself that the Peoples Bank & Trust Company will be in condition to re-open according to the terms hereof, and operated in the future with safety to all concerned, said Superintendent of Banks is authorized to surrender the assets of Peoples Bank & Trust Company to its officers and directors, and to surrender its affairs into the hands of said corporation, and to authorize it to re-open for the purpose of doing a general banking business, subject only to the claims herein provided and subject to the supervision of the State Banking Department.

This decree shall be the authority of the Superintendent of Banks, and likewise V. S. Whitesides, Liquidating Agent of Peoples Bank & Trust Company, to surrender all the [fols. 92–94] assets of said bank into the hands of its officers and directors upon order so to do by the Superintendent of Banks, and upon so doing and taking the receipt of the officers of said bank therefor, and filing the same in this court, said Superintendent of Banks and Liquidating Agent, shall be fully and finally discharged in this liquidation, and each of them and his bondsmen relieved of any liabilities on account of said bond.

It is further ordered by the court that an appeal is hereby granted in open court to any of the parties objecting hereto

who may desire to appeal, but with the court reserving to itself the question of fixing the amount of supersedeas bond, should appeal with supersedeas be desired.

Ordered, adjudged and decreed in vacation, this the 17th day of May, 1933.

(Signed) James A. Finley, Chancellor.

[fol. 95] Bank Buildings in Which There is an Equity in Pooled Assets

Bank Buildings and Lots of Peoples Bank & Trust Co., Tupelo, Mississippi; Peoples Bank & Trust Company, Nettleton, Mississippi, and Peoples Bank & Trust Company, Rienzi, Mississippi, carried as a total amount before re-opening	$55,000.00
Carried into reopened bank	12,500.00
Equity in three bank buildings carried in Pooled Assets	$42,500.00

[fol. 96] Furniture and Fixtures, $5,000.00

This represents the amount set up on the books of the re-opened bank, and is to cover furniture and fixtures in the Peoples Bank & Trust Company, Tupelo, Mississippi, Rienzi, Mississippi, and Nettleton, Mississippi.

This furniture and fixtures account is carried on the books of the liquidation at $20,000.00, and in setting it up this way it simply means that $5,000.00 is the amount carried to the credit on the re-opened bank's books at a conservative value, and all equity above this amount goes into the pool when the $5,000.00 has been realized for the benefits of the depositors.

After the re-opened bank is functioning, it will be necessary for the new bank to purchase the furniture and fixtures at a price to be agreed upon and approved by the court, and the purchase price above $5,000.00 will go into the pool for the benefit of the deferred portion of the deposits.

[fol. 97] Real Estate

No. 6. Real Estate, $68,917.50

This represents the amount of all real estate carried into the books of the re-opened bank, as shown by attached schedule and statement filed.

The re-opened bank is to collect the $68,917.50 out of this real estate account, for the benefit of the re-opened bank, and the depositors in the same, and the balance is then to revert to the pool interest. This simply means that the re-opened bank has good equity or first claim of $68,917.50 in the real estate account, with the further understanding and agreement that none of this real estate is to be disposed of without the approval of the Chancery Court. This is to be paid by the re-opened bank until the $68,917.50 is realized therefrom, and then to be paid by the pool.

It is further contemplated that all rents and issues coming from this real estate is to go to the re-opened bank as long as the re-opened bank carries the real estate account on their books.

Title to all the real estate will be held by the re-opened bank, subject to claim of the depositors to receive everything that is realized from the sale of the real estate above the $68,917.50, and as the real estate is sold the Chancery Court will have to approve the price for which sold, in order that the depositors will receive everything possible from this source.

Such property as stands in the name of the Superintendent of Banks will be conveyed to the re-opened bank, subject to the above conditions.

[fol. 98] Bank Buildings

Title to the bank buildings is to be acquired as any other such real estate. Title to these buildings and lots on which they are situated is in Peoples Bank & Trust Company, Tupelo, and title will pass into the re-opened bank by virtue of the re-opening decree. The $12,500.00 represents a very safe value of these buildings and when this amount is realized from the sale of these properties or in any other manner everything in excess of $12,500.00 will be

paid into the pool to be distributed to depositors. After Peoples Bank & Trust Company is functioning, in order to finally settle the matter as to the value of the bank buildings, it will have to make an offer therefor, and if the offer is approved by the Chancery Court the re-opened bank will pay the amount of the offer and everything in excess of $12,500.00 will go to depositors to be applied on the balance owing to them. The re-opening decree should provide the price to be paid therefor, to be agreed upon within a certain time and until the price is agreed upon and the bank building finally sold to the re-opened bank, title thereto will be held just as title is held to the other real estate; in other words, the re-opened bank will pay taxes, repairs, and insurance thereon and will have the use of the same. The 10% which the new bank is to receive is only on notes or other such items of assets which are carried into the pool assets, and it is not contemplated that the re-opened bank is to receive 10% on the sale of any real estate.

As to the question of attorney's fees for the collection and handling of pool assets, it is contemplated that in all cases where suit is brought on a note which provides for attorney's fee, that the attorney's fee be collected from the maker of the note, and where it is impossible to collect [fol. 99] attorney's fees from these note makers, the attorney's fee is to be paid to the attorney handling the suit; such amount to be approved by the court, in view of the fact that it has reference to pool assets.

[fol. 100] Appraisal of Loans and Discounts

It is impossible on so short a notice to give an itemized appraisal of all loans and discounts and other assets of Peoples Bank & Trust Company in liquidation, but the valuations placed on these various items of assets in the Exhibit "5" to the re-opening petition are very conservative. It is considered that in all events the amounts at which the various items are listed in Schedule "5" to the re-opening petition, can be collected therefrom. The re-opening plan contemplates that the bank, when opened in accordance with the set-up shown in Exhibit "5" of the re-opening petition, will be absolutely sound, and that under all conditions the re-opened bank will within a reasonable time be able to pay the depositors the amount which it

agreed to pay them. It is further contemplated that a considerable amount will be paid to the depositors from the pooled assets on the balances owing to them, but there has been no effort to appraise every item of assets in detail—other than to be absolutely convinced that the set-up shown in Schedule "5" is absolutely sound; that the assets shown therein are worth the amounts at which they are carried, and that the re-opened bank will be able to pay the depositors within a reasonable time the amount which it obligates itself to pay them.

[fol. 101] Statement of Earnings and Expenses

From December 24, 1930, to and Including May 1, 1933

Earnings

Exchange	159.89
Interest on Notes	47,624.91
Interest on Bonds	15,779.20
Rents	21,163.31
Interest—Miscellaneous	3,201.48
Total earnings	$87,928.79

Expenses

General Expenses	39,364.84
Salaries Paid	32,295.41
Taxes Paid	34,035.25
Farm Operations	8,522.77
Water and Lights	606.48
Telephone and Telegraph	1,285.52
Insurance	5,302.84
Interest Paid	18,412.76
Total expenses	$109,855.87
Net expenses	$21,927.08

[fol. 102] IN CHANCERY COURT OF LEE COUNTY

In Vacation, May 15, 1933

No. 6583

In re Reopening of the PEOPLES BANK & TRUST COMPANY, of Tupelo, Mississippi, by J. S. LOVE, Supt. of Banks, Petitioner,

VS.

MRS. OSCAR C. DOTY et al., Objectors

Statement of Evidence

APPEARANCES

Hon. C. R. Bolton, Messrs. Flowers, Brown & Hester, Representing the Petitioner.

Messrs. C. P. & S. H. Long, Representing Objectors, J. S. Wesson, Memphis, Tenn., and Mrs. Oscar C. Doty.

Hon. Rush H. Knox, Hon. E. C. Sharp, Representing G. C. & S. Mabry, of Derma, Miss., and Mrs. J. W. Brown, of Jackson, Miss.

Hon. J. Thomas Dunn, Representing Mrs. Birdie Lowery Dunn, Meridian, Miss.

Hon. Fred Smith, Representing Lamar Williams and L. L. Bethay.

[fols. 103-116] Messrs. George and Charlie Mitchell, Representing Mrs. Nannie McCarty of Tupelo, Miss.

AGREEMENT AS TO HEARING

This cause came on for hearing, on this, the 15th day of May, 1933, same being a day in Vacation, and by agreement of all parties that said cause may be heard on this date, the following proceedings were had and done therein, to-wit:

[fol. 11] V. S. WHITESIDES, being first duly sworn, testified as follows on behalf of the Petitioner, the Banking Department, as follows:

Direct examination.

By Mr. Bolton:

Q. Your name is V. S. Whitesides?
A. Yes, sir.

Q. Mr. Whitesides, what is your present; in what capacity are you at present engaged?

A. Liquidating Agent of the Peoples Bank & Trust Company of Tupelo, Miss.

Q. How long have you been Liquidating Agent of the Peoples Bank & Trust Co.?

A. Since early in January, 1931.

Q. Have you been the only Liquidating Agent it has had?

A. Yes, sir.

Q. Mr. Whitesides, are you familiar with the petition that has been filed by Mr. J. S. Love, Supt. of Banks, relative to the reopening of the bank?

A. I am.

Q. Mr. Whitesides, I will ask you if you have before you, a statement of the bank, when it was closed for liquidation or on the last day it was in operation, either, Exhibit 1, I think, to the original petition?

A. I have.

Q. Mr. Whitesides, I will ask you to state what progress has been made in the liquidation of the affairs of the bank—first, with reference to whether or not the preferred claims, public monies, have been paid?

A. Public monies have all been paid and all claims which [fol. 118] have been adjudicated as preferred claims have been paid except the claim of the Vina Banking Company and J. C. Williams Lumber Co., which is now before the Supreme Court.

Q. Mr. Whitesides, what is the position of the bank in liquidation, with reference to bills payable?

A. There are none.

Q. How much was the bills payable at the time the bank closed for liquidation?

A. $427,500.00 bills payable and $30,000 re-discount.

Q. That re-discount had to be paid?

A. Yes, sir.

Q. Is that the principal sum or does that include the entire indebtedness?

A. That was the principal sum as of the maturity of the various notes which went to make up that $427,500.00.

Q. Mr. Whitesides, to how many banks were those bills payable due?

A. Eight, I think, sir.

Q. How were they secured?

A. By the pledge of bills payable on notes of the Peoples Bank & Trust Co., and probably by some bonds, but principally by bills payable.

Q. About how much collateral was attached to those notes?

A. Somewhere approximately $700,000 or $800,000; I don't have that just before me.

Q. Have those bills payable all been paid?

A. They have all been paid.

Q. In addition to the payment of these, have you had to pay interest?

A. All interest and expenses incurred in connection with the collection of the bills payable, which expense was charged by the correspondent banks, has been paid.

[fol. 119] Q. Mr. Whitesides, has there been any equity saved for the bank in that collateral?

A. A large equity.

Q. About how much, if you have any idea?

A. Well from two, to probably $200,000 easily.

Q. What was the type of collateral held by these correspondent banks, as to whether or not it was the better paper or poor paper of the bank?

A. It was the best paper of the bank.

Q. The bank usually gets the good part?

A. Trys to, yes, sir.

Q. Mr. Whitesides, can you indicate, can you identify this Exhibit "1", as being the correct statement of the bank at the time it closed?

A. Yes, sir.

Mr. Bolton: We now offer the Exhibit "1" to the Bill, as an exhibit to the testimony of Mr. Whitesides, with the understanding it need not be copied into the record, but identified by him, which was agreed to.

Q. Now, Mr. Whitesides, I will ask you to tell the court what efforts have been made to rehabilitate the bank. It is alleged in the petition that efforts have been made by the Superintendent of Banks, Depositor's Committee and the stockholders or directors, to rehabilitate the bank and put its affairs in good condition". I will ask you to tell the court what has been done along that line?

A. In the late fall of '32, a move was started to re-open the Peoples Bank & Trust Company, which move was inaugurated by a large majority of the larger depositors of

the bank, These depositors met with the Depositors Com-
[fol. 120] mittee and the Depositors Committee stated that in their opinion that it was to the best interest of the depositors and general creditors of the bank and to the community as a whole, that the Bank be allowed to reopen. Following that, the Depositors Committee and others representing the depositors, took up this question with the representatives of the Banking Department and with the former officers, stockholders and Directors of the old Peoples Bank & Trust Company, of Tupelo, Miss., and since that time, these groups have been working together toward working out a plan for the reopening of the Peoples Bank & Trust Co., and produce sufficient signers to the depositors agreement, to comply with the law, as to re-opening banks.

Q. Mr. Whitesides, as Liquidating Agent, have you been in co-operation with these gentlemen or not, in this effort?

A. I have.

Q. Has there been a representative of the Banking Department present to aid in this?

A. There has been.

Q. Who was that?

A. Mr. A. C. Powell.

Q. I will ask you to tell the court something of the amount of consideration that has been given to this plan and how long it has been worked on and worked out and matured?

A. Well, it was some two or three months maturing, and deliberate consideration was given to the plan before anything definite was agreed upon.

Q. Now had there been any efforts made to re-open the bank prior to that time?

A. There had been some talk about it.

Q. Do you know why it did not mature?

[fol. 121] A. Principally because of the fact that the bank still owed its correspondent banks money and considerable portion of the collateral was tied up in the correspondent banks for the debt, and it was not until around January 1st, 1932, or probably a few weeks—no, until January 1st, 1933, or few weeks after that, until the bills payable were paid off.

By the Court: You mean this past January?

A. Wait just a minute. It wasn't until after all bills payable against the bank had finally been discharged, before serious efforts to reopen the bank and serious consideration, was made to re-open.

Mr. Bolton:

Q. Mr. Whitesides, tell the court whether or not you had—tell the court how much experience you have had with reference to liquidating of banks and the banks in general in this territory?

A. Well, I started to work for the Bank of Shannon about 25 years ago; worked down there little less than a year and came to the Peoples Bank & Trust Company and worked for them almost continually except the time I was in the Army, little less than two years. After the Peoples Bank & Trust Co. closed, I was appointed Liquidating Agent and have been acting in that capacity since.

Q. Mr. Whitesides, have you had opportunity to have experience in banks that have been in liquidation and closed and re-opened?

A. I have.

Q. I will ask you, from your experience, whether or not it is to the advantage of a bank that re-opens, after having been closed for liquidation, that it should or should not have bills payable due?

A. Think it is very much to the advantage that it should not.

[fol. 122] Q. Can you explain that to the Court, why?

A. Yes, sir. Naturally if a correspondent Bank loans a Bank money they want security, which is usually, round until the last two or three years, two or three for one. By that, it means the Bank borrowing money, would be required to put up two or three dollars security for one dollar borrowed, therefore the Bank borrowing money, would necessarily have to take out of its files, a larger per cent of its assets and most liquid paper to secure its bills payable and thereby put the proposition of the collection of this paper out of the reach of the depositors, until the bills payable had been paid off.

Q. I will ask you to state to the Court, whether or not it is advantageous for a bank to reopen under its own funds or the funds borrowed from the Government, or commonly known as R. F. C.?

A. It is my opinion it is to the very best interest of the Bank that it reopen on its own funds and not on borrowed funds.

Q. Now Mr. Whitesides, what would be the position of the Peoples Bank & Trust Co., if reopened, relative to the

liability of being embarrassed by indebtedness of the Peoples Bank & Trust Company, other than to its depositors?

A. The indebtedness of the Peoples Bank & Trust Co., is all due to its depositors, and under the plan of re-opening, sufficient amount of cash, with a reasonable margin, is on hand, to pay every demand that can be made on the Bank when it is reopened under the plan outlined.

Q. I will ask you whether or not that is any creditor of the Peoples Bank & Trust Co., that would be in position to require it to sacrifice its assets should it be reopened?

A. No, sir, there is not.

[fol. 123] Q. Now Mr. Whitesides, are you familiar with the plan for the re-opening of the Peoples Bank & Trust Co.?

A. I think so.

Q. Have you examined the Depositor's Agreement, that is filed as Exhibit "2" to the petition?

A. I have.

Q. Do you know what percentage of the depositors have signed that agreement?

A. Depositors or creditors owning approximately 80 per cent, have signed.

Q. Approximately 80%

A. Yes, sir.

Q. That is in excess of 75%?

A. Yes, sir.

Q. Mr. Whitesides, I will ask you to state what is the plan, with reference to the payment of the amounts due to the depositors and creditors?

A. The fact——.

Mr. Sharp: Object to that, because the plan, as outlined and filed, speaks for itself.

By the Court: Yes, I think that objetcion is well taken. The plan is all signed by them, typewritten and printed.

Mr. Bolton:

Q. Mr. Whitesides, I will ask you if you have in your possession, has the bank in liquidation, the "Depositor's Agreement," similar to this one, totaling more than 75 per cent in the amount?

A. Yes, sir.

Q. They are all the same printed forms?

A. Yes, sir.

Q. Mr. Whitesides, with referenec to the amount to be [fol. 124] paid to depositors, I will ask you if there will be sufficient funds for the payment of this, be sufficient cash on hand for the payment of the amount agreed to be paid to the depositors, upon reopening of the bank?

A. There is.

By the Court: You stated a moment ago, — would be sufficient funds on hand to pay all depositors. Previous in your testimony, you stated that there was a case pending in the Supreme Court whereby the Bank of Vina was awarded a preference claim and there is now pending in this trial, a preference claim of G. C. and S. Mabry. Will there be sufficient funds on hand, in case the Supreme Court should affirm the lower Court, on the Bank of Vina's preference claim and should a preference claim be awarded at this hearing to G. C. and S. Mabry, will there still be sufficient cash available to pay these preference claims, pay the depositors their 5% on opening and leave the legal reserve?

A. Yes, sir.

Mr. Bolton:

Q. Mr. Whitesides, under the terms of this agreement, 25% os to be assumed by the reopening of the bank. You stated you have enough to pay the 5%. I will ask you from what source, or rather I will ask you this, I note that in the statement as to amount of "cash on hand," on reopening of the bank is $102,302.98. I will ask you whether or not that money is all, from which you are to pay the 5%, to be paid on reopening—I will ask you whether or not that money is all from collections of the liquidation, or whether or not any of that is received from the stockholders in the proposed new bank?

[fol. 125] A. Part of it is received from the stockholders.

Q. I will ask you whether or not it will be necessary to resort to cash furnished by the stockholders in the new bank, as capital stock, to complete the payment of the 5%?

A. It will be necessary to resort to the cash produced from the new stockholders to have on hand this $102,302.98 this statement shows as of date of reopening and after giving to the capital structure, in effect.

Q. I will ask you whether or not there is included in this sum, the amounts received from the Depositor's Protective Fund, commonly called 3% fund.

A. There is.

Q. I call your attention to Section 5, second paragraph, page 12, says, "according to the statement of May the 1st, *hand* on hand as cash on that date, $102,302.98?

A. That is not correct. That $102,302.98, as I have just testified, is after giving effect to the capital structure.

Q. And you did not have that on hand prior to receiving the capital structure?

A. No, sir.

Q. And the liquidation does not own that much money, cash?

A. No, sir.

Q. Now, Mr. Whitesides, in the proposed reopening plan, it is set out that enough assets are to be carried into the reopened Bank, to insure the collection of the amount assumed by the reopened Bank and in the petition it is alleged by charging off 75% of the deposits and credits, that the reopened Bank will be in a solvent condition. I will ask you to tell the Court whether or not that is correct?

[fol. 126] A. In my judgment it is.

Q. Will you turn to the statement of the assets that will go into the reopened bank. I will ask you to please go through that statement and explain to the Court just what is being done?

Q. Well the first item shown on the statement is bills receivable, $216,892.08. These figures were arrived at, as shown by the list of loans and discount or notes which are carried into the reopened bank, Total of these loans and discounts, $472,722, is given after giving effect to the capital structure, after having given effect, the total, these bills receivable or notes, is $491,908.45, which it is contemplated taking into the reopened bank, at $216,892.08, with the agreement and understanding, as set out in the bill, that when this $216,892.08 has been collected, that the balance of these notes or $275,016.37 will go to the pool or trust fund. The reason for carrying these figures in this manner is not working out each note and carrying it at its face value, and then, that there are a number of lines which are secured by the same collateral or a number of notes which are secured by the same collateral and it is not considered that the entire line is good. In this matter, this margin or a difference of $205,116.37 is arrived at. In my opinion, the $216,892.08, carried into the reopened bank, is conserva-

tive and considerable more than that would be collected from this lot of notes. All the residue, as given above, will go into this pool or trust fund.

Q. I will ask you whether or not in the plan of reopening, it is provided that the residue should go into this pool? [fol. 127] A. It is.

Q. You stated something else about after giving effect to the capital structure. Can you explain that to the Court?

A. $19,486.44 is included in this total, $491,908.45, which represents good notes, which have been put up by stockholders to take care of their 50% stock liability, is lieu of cash.

Q. In other words, they are notes that are not yet in the bank, but will be placed in the bank upon reopening?

A. Yes, sir, that is correct.

Q. Now you stated these notes are taken from stockholders. I will ask you whether these notes, if amply secured, are good notes?

A. Yes, sir, I consider that $19,186.44 are good, a large majority of which are payable within a reasonable time and none later than January 1st, 1934, as I recall it. All these notes are payable to the Peoples Bank & Trust Company, Tupelo, Miss. and these notes and the cash collections, are being handled by me, as trustee, and not as Liquidating Agent, and I am under obligation and under trust, to turn the notes, with the cash, which has not been collected, as liquidating agent, to the parties who had given the notes, or paid in the cash?

By the Court: That is in the event the bank is not reopened?

A. Yes, sir.

Mr. Bolton:

Q. Mr. Whitesides, can you give the Court your reason for taking security from some of these stockholders instead of cash?

[fol. 128] A. Because it was not convenient for some of the stockholders to raise the cash, but they could give good notes, well secured, and we had sufficient amount of cash to meet the requirements.

Q. If the bank had opened and if they had not paid cash, would you have considered these acceptable loans for the cash?

A. I would.

Q. The instrument from which you have been testifying, is headed in what way?

A. "List of loans and discounts carried in reopened bank."

Q. Which has been attached as a supplement to the Original petition?

A. Yes, sir.

Q. All right, go ahead?

A. Item of Bond account, $50,000.00. This $50,000 item is the amount out of the bond account which is to be carried into the books of the reopened bank. The bond account of the bank in liquidation, as appears now, is $79,599.15, after giving effect to $2,011.00 bonds, which are to go in under the new capital structure. This total will be $81,-610.15, $50,000 of which is to be carried into the books of the reopened bank, leaving an effect of $31,610.15 to be carried into the pool. The plan of reopening contemplates that when the $50,000 is collected from this bond account, that the residue, whatever it may be will be turned over to the pool.

Q. You are testifying now from an amended Exhibit to the petition, headed how?

A. "Bond account".

Q. All right, go ahead?

[fol. 129] A. The amount of $50,000 caried into the reopened Bank, covering this $81,610.15 bonds, as testified to above, is considered as a conservative value of these bonds at this time. This value is based on my personal knowledge of the character of the bonds and not on the market price. Some of these bonds are drainage bonds; some are road district bonds; water works and sewerage bonds, special school district bonds and bonds of the character where the market at this time is very low and very depressed, but as I consider, that there will be no trouble in realizing $50,000 from this $80,000 of bonds.

Mr. Long:

Q. I wiuld like for him to take the Depositor's agreement, where they say they will do that. That will satisfy my mind a whole lot if he will show me that?

A. Item 8, "I hereby authorize the Superintendent of Banks of the State of Mississippi, with the approval of the

Chancery Court of Lee County, Mississippi, to act for me in connection with the reopening of the Peoples Bank & Trust Co., and in making contacts with the re-opened bank in conformity with this agreement".

Mr. Long:

Q. Is it your understanding of that contract, and is that the way it is to be managed, regardless of the amount that may be set aside to the bank, aside from the trust fund in the first instance, whenever the bank collects enough from whatever is set aside to pay the depositors 25 per cent, without interest, then all the balance of that fund so set aside is the bank, it to be set aside as a Trust fund?

[fol. 130] A. Yes, sir. I would like to make this statement. I want to testify here, that it wasn't the intention of the Liquidating Agent of the Bank, the Banking Department, Depositor's Committee or any one with whom I have come in contact with, in the reopening plan of this bank, to take from the depositors or creditors of the bank, one cent that belongs to them, but rather the idea or object has been at all times, to do whatever was to the best interest of the depositors and creditors and in this particular bond account of $50,000, as soon as that amount is collected from this $80,000, the residue is to go to the trust fund for the benefit of the depositors and creditors, who have charged off the 75 per cent.

Mr. Long:

Q. Now does that same agreement, although the 25% to be paid to the depositors, is not to receive any interest, does that same agreement apply, as to any interest that may be collected by the bank on this fund set aside for them in the first instance. In other words, when this $50,000 collected out of that fund, pays all interest, is the balance to be turned back to the trust fund?

A. It is contemplated, as I understand it, that the interest as collected on these bonds, is to be retained by the Bank, and further contemplated in the plan for the reopening of the bank, that all earnings up to $7500.00 each year, be paid into this trust fund for the benefit of the depositors of creditors who have charged off their 75 per cent, until $45,000 has been set up in this fund, which means more or less in effect, that the reopened bank is being reopened and [fol. 131] operated for the benefit of the depositors of the

bank, that being the intention and the whole thought in the reopening of the bank. It was felt that it would be to the best interest of the depositors and creditors of the bank, that it be allowed to reopen, because if the bank was open, we believe it can make some money, and thereby any profits arising, are to go to these depositors and creditors, and instead of being detrimental to their interest, we feel that it was to their best interest.

Mr. Sharp: We object to that answer, because incompetent to a certain extent. The plan set out in the original petition, he says that $7500 is to be paid by the bank each year into this trust fund or pool. It is conditioned upon that fact after paying all salaries.

Mr. Sharp:

Q. You say you think that $50,000 can be realized out of those bonds?

A. I do.

Q. You think any more than that can be realized?

A. I do.

Q. How much more?

A. It would be hard to answer that question with any degree of accuracy, because some of those bonds are in default.

Q. And if not over $50,000 realized, there would be no equity for the depositors.

A. But it is further true that all that which is realized from the bonds, would go to the benefit of the depositors and not to the benefit of the reopened bank.

Q. Who is going to have the disposing of those bonds?

A. We do not have much hopes that we will be able to [fol. 132] sell any of these bonds in a short while.

Q. That is not in response to my question?

A. With reference to the sale of the bonds, and the disposition of any assets taken into the reopened bank, it was contemplated that if the Court felt that it should pass on the sale of these assets, the price received, that the management of the reopened bank would be very glad for that to be done, the whole thought being to realize as much as possible from these assets.

Q. Now if those bonds are sold, does the reorganized bank get 10% as profits in your agreement?

A. No, sir, the agreement does not provide that the reorganized bank get a 10 per cent commission for any collections made which are taken into the reopened bank. The agreement provides, as I understand it, the 10% commissions, which the reorganized bank is only to collect out of the pooled assets.

Mr. Long:

Q. You just stated a few moments ago, that it wasn't the intention of the people who reorganized the bank, to take one penny from the depositors. On what theory do you figure the new bank is being entitled to the interest on the bills payable and the bonds that are turned over to the new bank, the depositors are to get no interest on the 25%?

A. The bank would be entitled to no interest on Bills Receivable.

Q. I am talking about on the bills—getting down to plain language, if you don't understand that, on what theory if you say you do not want to take a copper away from the depositors, does the people who reorganize the bank, figure [fol. 133] that they would be entitled to the interest on the notes that are now due the Peoples Bank & Trust Co., which are to be turned over to the new bank, and the bonds which are to be turned over?

A. On the theory that now the depositors of the Bank are naturally not going to have to pay for the cost of the liquidation. This reopening plan contemplates that all interest on notes, interest on bonds, rents from real estate, or any other paper, be handled by the reopened Bank and out of these profits or earnings, that first the expenses of the liquidation, which includes taxes, insurance, repairs and up-keep of the various properties, be paid and then all earnings over and above these, amounting up to $7500.00 each year, are to go into the pool for the benefit of the depositors, who charged off the 75%.

Mr. Sharp:

Q. And in addition to all the interest on bills Receivable, notes and increase from real estate and all other profits which will be retained by the bank, the bank will also receive an extra 10% of all the assets of the pool which is collected from the assets in the pool?

A. This 10% which is collected from the assets in the pool, is to go into the earning account of the bank out of which the $7,500 is to be paid, just as if that earning had come from any other source.

Q. Is the Banking Department still going to pay a Liquidating Agent and Attorney here out of these assets?

A. The plan for the reopening of the bank, contemplates, as I understand it, that the liquidation of the pooled assets is to be handled by the reopened bank and there will be no [fol. 134] Liquidating Agent; be no attorney for the Banking Department paid out of pooled funds and the only expense coming out of the pooled funds will be 10 per cent to the re-opened bank and Court costs, or attorney's fees, whenever it is impossible to collect this Court cost or attorney's fees from the maker of the note or the parties owning the obligation, which is being collected.

Q. Is the new bank going to put up any bond or financial obligation for the faithful handling of all these matters?

Mr. Bolton: We object right now to this cross-examination in the middle of the direct examination.

By the Court: If there can be anything brought to light by you gentlemen that I may have a clear understanding, let's have it, but I do not want any cross-examination in the examination in chief.

Whereupon the witness continued on his examination in chief as follows:

A. Next item shown on the statement, is over drafts, $4,101.94. That represents, as shown by the schedule filed, over drafts on 13 different coupon accounts of the various sub-divisions of Lee County. These over drafts arose and were created by virtue of the fact that prior to the clos-[fol. 135] ing of the Peoples Bank & Trust Co., which bank was the County Depository, there was presented to it for payment, coupons of these various districts, which over drew this coupon account, as set out in the schedule and the bank now from these coupons expects to collect and recover from these various districts, the full amount of this over-draft, $4,101.94; said coupons not having been surrendered to the District or the County or anyone representing them.

Mr. Bolton:

Q. I will ask you on the question of those coupons, whether or not prior to the closing of the bank, the bank had instructed its New York co-respondent to pay these things and draw on rather charge to bank account here?

A. As County Depository for Lee County, the correspondent banks of the Peoples Bank & Trust Co., who were, as a rule paying matters for the County, were instructed by the Peoples Bank & Trust Co., to pay and charge to its account, these coupons as presented, which coupons were forwarded to the bank periodically as is the custom of handling such matters and in that manner these over drafts were created.

Q. Do you have a schedule you were testifying from?

A. I have.

Q. Identify it please?

A. It is captioned "List of over drafts carried in reopened bank".

Q. Proceed?

A. Next item is "stocks and bonds, $7500.00. This stock and bond, total account, as shown by the books of the liquidation at this time, is $37,046.00, made up of stocks in several local corporations. $7500.00 of this amount is to be [fol. 136] carried on the books of the reopened bank, leaving an equity or difference of $29,968.60 which is to be turned, or any amount over $7500 collected from this $37,468.60 is to go into the pooled assets for the benefit of the depositors and creditors who charged off the 75%.

Q. All right, next one?

A. Next item is, Furniture and Fixtures account, (3 sets) $5,000, is carried on the books of the liquidation at this time, furniture and fixture account, is carried at $20,000.00. It is contemplated carrying $5000 of this amount on the books of the reopened bank, leaving $15,000 equity to be carried into the pooled assets. It is further contemplated in the handling of this particular item, that the reopened bank will, after it begins to operate and gets to the point where it can safely do so, then it will buy this furniture and fixtures, at a price to be agreed on, as is the sale of real estate, all above the $5000 from the sale of same is to go into the pooled assets for the benefit of the depositors and creditors who charged of- 75%.

Q. You say to be "agreed on". Who is to pass on that question?

A. It is my understanding, as in the sale of the real estate, price received, it is to be approved by the Court and it is my idea that the price of these fixtures and furniture should be handled in the same manner.

Q. Next item please?

A. Real estate, $68,917.50, and carried on the books of the reopened bank. Real estate account as shown by the books of the liquidation at this time, is $372,623.86, after giving effect to the capital structure, this real estate ac- [fol. 137] count will show $375,723.86; of this amount, $68,-917.50 is to be transferred to the reopened bank, leaving an equity of $306,806.36 to be carried into the pool, proceeds of the sale of which is to go for the benefit of the depositors and creditors who have charged off their 75%.

This $68,917.58 represents a very, very conservative value of this real estate. The Peoples Bank & Trust Co., In Liquidation, owns some of the most valuable real estate in Tupelo, and Lee County, and it is believed that if time is given to work out these assets, in the plan which is contemplated, that a large equity that is in the real estate will go for the benefit of the depositors of the bank. It is contemplated that as soon as the $68,917.50 is collected from this real estate account, that the balance will go to the pool.

By the Court:

Q. Let me ask a question as we go along there. You are putting $68,000 value of the real estate into the new bank?

A. Yes, sir.

Q. Now the new bank is assuming 25% of the deposits?

A. Yes, sir.

Q. Is that for the purpose of giving the bank that much to pay that 25%.

A. It is for the purpose of paying the 25%. The bank is not to get any of this, the depositors is going to get it.

Q. Then out of this sum in the new bank, they get their 25% that is the plan?

A. Yes, sir.

Q. Then whatever is realized out of all the balance of it, that goes into the pool with the exception of the 10% you mentioned?

A. That 10% you mentioned, goes into the pool?

[fol. 138] Q. I understand, but with the exception of the 10%, all the difference goes into the pool for the benefit of these depositors who signed off the 75%. From the collection of all assets, except real estate, they are not taken into the new bank as assets; all that difference with the exception of real estate, less 10% for collecting it, goes to the depositors in lieu of their 75% they signed off?

A. Yes, sir.

Mr. Bolton:

Q. All right, proceed?

A. Bank buildings, (3) $12,500.00. This account was carried on the books of the liquidation at this time, amounting to $55,000, which refers to the bank building at Tupelo, Mississippi, Rienzi and Nettleton, Miss. It is contemplated setting up $12,500 of this amount on the books of the reopened bank, leaving an equity on the books, of a difference of $42,500 to go into the pool for the benefit of the depositors and creditors who charged off their 75%. It being contemplated that as soon as the bank gets under way and we propose to do so, that the reopened bank will buy these bank buildings at a price to be approved by the Court and that all amounts received above the $12,500 is to go into the pool for the benefit of the depositors and creditors who have charged off the 75%.

Q. This bank building item and real estate is treated practically the same way?

A. Yes, sir, there is no reason from standpoint of the books of the bank, why that could not be included in the real estate account; all be treated in the same manner, all consolidated as one?

Q. All right?

A. Next items is cash, $102,302.98, which represents the [fol. 139] amount of cash that will be on hand on the date when the bank reopens, if it is reopened, under the plan as outlined.

Q. You have stated that part of that comes from the capital stock?

A. Yes, sir.

Q. That is all of the assets in the reopened bank I believe?

A. Yes, sir.

Q. Now take the liability side?

A. Capital stock, $55,000. This $55,000 capital stock was realized by the stockholders in the old Peoples Bank & Trust Company paying into the reopened bank, this $55,000.

Special Reserve, $12,309.06. That special reserve account represents funds which have been collected by the Union & Planters Bank & Trust Company of Memphis, Tenn., which collateral is the residue of the collections they held after the Peoples Bank & Trust Co., had paid its bills payable to that bank, and which was held by them, on account of a suit having been filed against the said Union & Planters Bank, and in view of the fact that there might be such other similar suits. This represents money collected on this collateral, of which money I have in my hands.

Mr. Hester: You are holding that pending the outcome of that claim?

A. This $12,309.06 is being held by me pending the outcome of the claim against the Union & Planters Bank.

Mr. Sharp: We would like to have an explanation about that claim and what kind of a claim it is.

By the Court: Let me ask a question there. Now you are carrying it in your liability?

A. Yes, sir, as a special reserve.

[fol. 140] By the Court: I don't see that it makes any particular difference as long as in his liability, after he got it, be that much ahead, will have to transfer to the assets.

Mr. Sharp: Suppose no liability, what becomes of that fund?

A. It belongs to this reopened bank because it is sued too.

Q. That is the reason I want you to explain. Suppose the bank don't reopen and no liability established, where does that money go to.

A. Belongs to the depositors and don't make no difference whether opened or not, they get it. The amount of the suit is about $1700 to $1800, whatever it is comes out of this $12,309.06 and the difference goes to the depositors.

Q. But if it is reopened the bank keeps it?

A. Yes, it takes that account.

Mr. Bolton:

Q. Mr. Whitesides, tell the Court whether that is a charge against them in the cash or where?

A. It is included in the cash. I have tried to testify to that.

Q. And this in effect, the special reserve is a contingent liability that will have to be paid. It is a liability like a depositors liability?

A. No, sir, it is not.

Q. What do you have against it on the asset side?

A. Money.

Q. All right, go to the next one?

A. Demand Deposits, account, $79,566.24. This is the amount required to pay the 5% and for which amount the depositors of the bank have a right to call for on that date if they desire.

Next, Demand Cashier's checking account, $247.97. This represents 5% of the outstanding cashier's checks, as shown by the books in liquidation.

[fol. 141] Next: Demand over draft outstanding account, $3,039.95. This represents 5% of the outstanding over drafts.

Demand common claim account, $43.39. This represents 5% of the common claims account.

Deferred deposits and claims, (deposits) $258,683.60, This represents 20% of the deposit account.

Cashier's checks, account, $991.47. This represents 20% of the cashier's checking account.

Drafts outstanding, $12,159.08. This represents 20% the outstanding draft account.

Common claims, $173.65. This represents 20% of the common claims account, which was itemized on the statement, which shows total assets of $467,214.50, and total liability of like amount.

Mr. Bolton:

Q. You just finished this statement of the reopening of the bank. We will ask you if you covered everything you wanted to cover in it?

A. Yes, I think I have, except that I would like to have my testimony read back to me as to the $12,309.06 special reserve account.

Stenographer here referred to notes and read the answer of witness, who made the further following statement, with reference to special reserve account.

A. This $12,309.06 is set up on the books as a contingent liability to take care of any claims which might grow out of suit against the Union & Planters Bank, similar to the Spencer suit. This is the same suit that I referred to before, which has a possible liability of $1800 to $2000. If the Union & Planters Bank looses this suit, then the amount necessary to save them from any loss or harm as to the [fol. 142] out- or going out of this amount, of whatever amount of this $12,309.06 is left, after all such suits are settled, goes to the benefit of the depositors in the reopened bank, which will finally enure to the benefit of the pool, because as soon as sufficients funds are collected to pay the 25% set-up of the balance of the assets, as testified before, are to go into the pool. The whole scheme and idea being that whatever is left in this special reserve fund, after taking care of contingent liabilities, is to go into the pool for the benefit of the depositors and creditors who have charged off the 75%.

Q. Now Mr. Whitesides, it is alleged in the petition that the Depositor's Agreement carries with it, which you have stated, has been signed by more than 75% of the depositors, carries with it a petition signed by the depositors, to the Chancery Court and the Supt. of Banks, asking that it be, as shown on the back of the cards, which is attached as Exhibit "2". I will ask you if practically all cards which you have, are signed by these parties, with their petition on it?

A. All the cards have this petition on it.

Mr. Sharp: Object to that, cards are the best evidence.

Sustained by the Court.

Mr. Bolton:

Q. Mr. Whitesides, it is alleged in the petition of the Supt. of Banks, that the plan for reopening of the bank, is for the best interest of all the depositors and creditors of that bank and more will be realized by the depositors and creditors by the reopening of the bank, that will be realized by the continuing of the bank in liquidation. This is in the

petition of the Supt. of Banks, *As* as Liquidating Agent, of the bank, familiar with its affairs, I will ask you to tell [fol. 143] the Court what in your judgment, is the truth of that matter, whether it is to the best interest of the bank and the depositors and creditors, that the bank shall be reopened or it should not be reopened or whether or not more can be realized by the bank reopening or the bank remaining in liquidation?

Mr. Sharp: Object on the ground, it is incompetent and irrevelant and he can only state the facts and the Court can determine whether to the best interest of all parties or not, the Court is the best judge.

Court reserved ruling.

A. According to my best judgment, it is very much to the best interest of the depositors and the creditors of the bank that it be allowed to reopen under the plan outlined.

By the Court: Do you make that statement of your knowledge of the situation and possible liability of collecting the assets?

A. Yes, sir.

Q. Then I want to know what you base your judgment on that it will be to the best interest to reopen the bank?

A. Because of the fact that values at this time in real estate, which go to make up a large percentage of the bank's assets, are very low, practically impossible to sell a piece of land, regardless of the type or where it is located or what it is worth. Cotton for the past two years have been very low, which necessarily resulted in the decline of land values and of real estate. It is my judgment, that conditions will not continue as they have for the past few years, but we will have an improvement in conditions; improve- [fol. 144] ment in commodity prices, farm products and that therefore the values of real estate will be increased on that account.

Q. Would not that afford the liquidation the opportunity to make collections as well as the reopened bank?

A. I think it would to a very large extent, because the indebtedness owing to a reopened bank is by people who are depend-nt largely on the farmers and farm products to get money to pay their debts. This is true largely whether or not the debtor is a farmer or not.

Q. Then you mean by that, that those conditions would assist the debtors of the Peoples Bank to pay its obligations to the bank in liquidation.

A. In the reopening of the bank, I think would increase the values of real estate and other assets.

Q. Would not those conditions exist if the bank continued in liquidation?

A. Reopening of the bank, I do not think would have anything to do with the general conditions of the country, but I think it would have a marked effect on the local conditions. It is generally recognized that a debtor to a closed or bankrupt institution, does not have near the regard for his obligations as if he owes it to an open or going institution. Furthermore, if the bank was open and going, and had a good man come to it, whom it would be justified in loaning that man little additional money with which to make a crop, and the reopened bank will get the benefit of this crop, whereas the bank closed does not have any hold on this crop and it is very hard to obtain a second mortgage on a crop, specially where the party borrows money from the Seed Loan, and a very large number of farmers are borrowing from that source at this time.

[fols. 145-154] Mr. Bolton:

Q. From your experience with parties that owe a bank, that have just borrowed money to finance their crop from the seed loan, I will ask you to tell the Court whether or not there is anything left after the payment of those loans from which the bank can make any substantial collections?

A. My recollection and from what I have seen in the Press——

Mr. Sharp: Object to what he saw in the press.

Sustained.

Q. Just tell your experience?

A. My experience, that as a rule when people borrow from the seed loan, that they borrow more or ask for more than they would if dealing with a bank or similar institution, because they feel they are going, when they make application, to have it cut down if they get the money, and therefore they will borrow more than if dealing with a bank or a going and open institution.

Q. I will ask you whether or not goping banks can handle and sell real estate to a better advantage than liquidating banks.

Mr. Sharp: Objected to that.

Court reserved ruling.

Court adjourned until 8:30 A. M.

[fol. 155] Whereupon, the case continued for trial on behalf of the objectors, Mrs. Oscar C. Doty, Mrs. Birdie Lowery Dunn and Mrs. Nannie McCarty, Mr. Whitesides being further examined, testified as follows:

Mr. Bolton:

Q. Mr. Whitesides, please answer the question which I had just asked you yesterday evening before adjournment, which question was read by the Stenographer?

A. It is my judgment that an open or going bank can handle real estate, both in the sale and operating of same, much better than a closed bank.

Q. Mr. Whitesides, I will ask you what is the effect, generally, on values, particularly real estate values, of banks being in liquidation in a community?

A. I have heard it estimated in a community like this, where a bank was closed, specially a bank that had anything like the business that the Peoples Bank & Trust Company did, that real estate automatically declined 25% and if this condition continued to exist a longer time, these values would continue to decline, because of the fact that property owned by closed banks or banking institutions, are more or less decreased property.

Q. You mean they are sitting by——

A. Waiting for the time——

Q. To get them at a bargain?

A. Have to be sold and then buy them at less than the value.

Q. I will ask you this. The bank has been in liquidation now almost two and a third years, hasn't it?

A. Yes, sir.

Q. What is the relative cost, without giving figures, as to [fol. 156] whether it is larger or smaller, to make collections now as compared to what it was at the earlier period of the liquidation, per dollar?

A. I would say the cost now, the cost for the year 1933, if the liquidation is continued, would be two to three times

what it was in the year 1931, the year following the closing of the bank for the reason a large part of the notes have been collected and therefore it takes more work and there are few good notes to collect, fewer than there were in the beginning, and the cost of handling cannot be reduced as compared with the amount collected.

Q. You mean the cost per dollar is higher?

A. Percentage of cost and right there I would like to state on this percentage of cost to collect the assets of the Peoples Bank & Trust Company, has been $2.97\frac{1}{2}$ per cent as of May 1st, 1933, compared with the 3% from the National system in 1931 and 3.2% for the cost in 1932. These figures that I am quoting from, is a clipping from the American Banker's Daily Journal of New York.

Q. Mr. Whitesides, is that, do you have reference to that being the entire cost or the earning cost?

A. That is actual cost, net cost.

Q. I understand you to mean——.

A. After all earning have been deducted.

Q. The interest and the other earnings from other properties?

A. That is right.

Q. That much out of the principal?

A. Yes, sir. Mr. Sharp stated yesterday that it had cost $109,000 so far to liquidate the Peoples Bank & Trust Co. As a matter of fact, the cost has been little more than $21,000.00.

[fol. 157] Q. Now Mr. Whitesides, what does that include; the expenses——

A. The expenses include of course, taxes, insurance, salaries, repairs and maintenance of all the properties and any other incidental expenses. Of this $21,000 of actual net cost of the liquidation, includes the taxes for the year 1931, of approximately $17,000 for which of course the liquidation could receive no benefit and further, includes $18,000 approximately, of interest paid on bills payable, which were an obligation of the bank when it closed, therefore if these two items were eliminated from the expense account, the liquidation would show a profit.

Q. Now that has been the expenses in the past. I believe you say that from now on, the cost will be higher per dollar?

A. Yes, sir.

Q. Then if up to this point it has cost more than the interest and earnings of the bank, in liquidation, to liquidate it, if the reopened bank proposes to liquidate it for the interest and earnings, what do you have to say as to the advantage of it to the liquidation, from the standpoint of the depositors in the old bank?

A. It means in effect, that the depositors in the old bank, will get liquidation free of charge, the amount which is being taken over by the reopened bank, that is their 20%, it will virtually cost them nothing because of the fact, the reopened bank hopes to make some money and naturally will make some money.

Q. Have you got any other reasons from the records down there, why it is to the best interest of the depositors; why the bank should reopen, that I have not asked you about?

A. Well one of the biggest reasons that has not been testified to is the morale. I think it will mean lots to the [fol. 158] morale of the community and I think will increase the value of property, not only the property of the liquidation, but property in general.

Q. That is the only other reason you have to give?

A. I don't know, Mr. Bolton. As I see it, great many reasons why the bank should be allowed to reopen.

Q. You have got a list of the assets to be put in the pool; I believe that was to be appended to the original petition. I don't care to go through it all, I just want you to identify it?

A. I have there, schedule, marked "List of loans and discounts going to the pooled assets".

Q. You willing to testify about it as to any questions that may be desired to be asked about it.

A. It is an itemized list. I am willing to testify and give to the record.

Q. On the question of the capital structure. You have $200,000 at the time of the closing of the bank for liquidation. It is alleged that the capital stock is to be deducted and application for amendment of charter has been made, at the time of the filing of the petition, the amendment had not been approved. Tell the Court whether or not that amendment has been approved and authorized?

A. It has and back in our hands.

Q. Reduced to $55,000 I believe?

A. Yes, sir.

Q. I will ask you to get one of the depositor's cards, and referring to Section 6 therein, it is provided that in consideration of the reopening, benefits to accrue from the reopening capital stock or not less than $35,000 paid in, that the old stockholders be paid 50% of their original capital stock as subscribers for new stock to be released from liability as their stock. I will ask you to state this [fol. 159] first: How much more capital stock have you been able to get subscribed under that agreement than you had expected to be able to collect?

A. The agreement provided for $35,000 and $55,000 has been collected or will be collected.

Q. You mean it is ready?

A. Yes, sir, it is being held.

Q. With the bankable assets?

A. Yes, sir.

Q. Can you give me a statement as to how much additional you have got of stock. You have got $55,000, how much additional you have gotten from stockholders from whom you did not have very much hopes of being able to collect?

A. Between $15,000 to $20,000.

Q. You remember about what percentage more that there was, than you thought you were not going to be able to collect?

A. I do not have the percentage figures in my mind.

Q. Mr. Whitesides, what agreement has been entered into with reference to the payment of dividends to the stockholders? It is alleged here they should not be paid any dividends until the full amount of the 25% asked to be, agreed to be paid back by the reopened bank, has been paid. That is correct is it?

A. Yes, sir.

Cross examination.

By Mr. Long:

Q. The stockholders in the new bank are composed of the stockholders of the old bank; a certain part of them?

A. Every one of them sir, under this set-up they are now new stockholders.

Q. Then the amount of the new capital stock that has been subscribed, is $55,000?

[fol. 160] A. Yes, sir.

Q. And that would necessarily carry with it that $55,000 if it could be made out of the old stockholders by law, and released from liability to the depositors, wouldn't it?

A. Yes, sir.

Q. The other $55,000 that was paid in, is capital stock in the new bank, and it is not in any way pledged for the amount of the payment that is agreed to be paid to the old depositors?

A. No, sir, not for the depositors who have charged off the 75% in the pool, it is not pledged to secure the pool.

Q. Is there any provision in the compromised agreement, making the assets of the new bank liable for the payment of this 25%?

A. Yes, sir, all the assets.

Q. Whereabouts in the agreement does it say that? Aside from the amount of the bills receivable taken over if not collected, is the new bank liable in any way for this payment?

A. Yes, sir, all this $55,000 capital that goes in here, just as any other capital; it has got to be lost before the depositors ever lose anything.

Q. Have they got any right to transfer it against the bank? Can't the bank stay there and run until it loses and they got no right to get any of it out?

A. I don't know as I understand your question. The capital is there, as the capital in any bank for the protection of its creditors.

Q. But get your Depositor's Agreement and see if it proposes to pledge the assets and capital of the new bank for the payment of the 25% afterwards. That is all I want to know?

[fol. 161] By the Court: Judge, I think the law does that.

Mr. Long:

Q. What I want to know, what I am after is this, it should be fixed in the decree, the way I understand this agreement, if never collected out of this stock to be taken over, they never will get no more.

Mr. Bolton: No, sir.

Mr. Long:

Q. This $55,000, all that is paid in or anything that is liable?

By the Court: Absolutely, that will be in the decree before I sign it.

Mr. Whitesides: That is not in the agreement.

Mr. Bolton: We expect to put it in the decree.

Mr. Long:

Q. With reference to the $35,000 of the assets, that will be taken for a reserve fund?

A. $35,000 and $10,000.

Q. That much assets are taken from the depositors and put in the new bank. How is that to be paid back to the depositors in the old bank?

A. It is to be paid back out of the earning- of the reopened bank.

Q. If the new bank never has any earnings, how is it to be paid back?

A. Those assets are right there still for the benefit of these depositors.

Q. But are the depositors ever going to get it out under that agreement?

A. Just like any other funds.

Q. They would not have any debt for it?

[fol. 162] A. The decree will provide it; just like provides any other.

Q. That is what I am trying to bring out?

A. That is the instrument there; it shows that.

Q. Now I asked you yesterday, but I can ask it again. If I understand the proposed plan and agreement to be embodied in the decree is this: That as to the pooled assets, consisting of bills receivable, that will be placed therein, that there is a small charge of 10% on that and whatever necessary attorney's fees, have to be paid out?

A. And the Court costs.

Q. And now nothing of that sort applies to the collection of the bills payable and other properties that is turned over to the bank, to recapitalize it?

A. That is correct. There is no charge to be made for collecting any of the assets going into the reopened bank.

Q. Then if all those old notes that are standing, placed in the pooled agreement, are to be collected, the bank will get $60,000 or $70,000 for collecting, but the old depositors would get the benefit of that 90 cents on it, to go on their deposits?

A. Yes, sir.

Q. Which of course will never happen?

A. That is correct.

Q. Now with reference to the real estate. If I understand it, the new bank, up to the time the real estate is unsold, it will pay the taxes and upkeep of it and get the income for it and the only way you hope for the depositors to be benefited out of that, is that the property productive and keep up until such time as financial conditions of the country are in better shape and the price of lands advances; that right?

[fol. 163] A. Yes, sir, and this property be sold and converted into cash.

Q. And this does not apply to anything except the bank buildings, but with reference to the bank buildings and the fixtures in them, I understand from my conversation with you gentlemen, that if at any time a bona fide offer is made for the property—I will put this condition in there, it ought to be in there, a certified check by the bidder, making the same for 10% of the amount of the offer, holding his offer, that it will all be submitted to the Court to be passed on, and the bank will either agree for the sale to be made if the Court thinks it is proper, or take the property over for itself at this offer?

A. Yes, sir, that is understood to be one of the conditions.

Q. Now this Depositor's Agreement does not say when anything shall be paid except the 1st 5 per cent. What is the intention of the bank as to the accumulation of the funds and payment of the balance? What per cent of the balance does the bank expect to retain in its hands before paying out any more?

A. Section B, of Paragraph 2 of the Depositor's Agreement, provides "Balance to be paid in installments whenever collections have been made from the assets taken over from the closed banks, shall use 5% of the present outstanding deposits".

Q. Now then in case the assets taken over from the old bank, should not amount to that much at any one time, but any profits that the new bank is due to take over under this agreement on these old figures aggregating 5%, is it the intention of the bank to pay it then?

A. My judgment is, that it would not be possible to mix funds collected from the pooled assets and funds collected

from the assets in the reopened bank, and that if, for example, 3% was available from funds collected from assets of the reopened bank, and 2% available from funds col-
[fol. 164] lected from the pooled assets, that two dividends in effect would have to be paid.

Q. I am talking about that part of the profits which the bank pays back. That $7500 a year and any other sums over there, is that to be placed in the pooled assets or is that to go into the other fund of 25%?

A. The $7500 coming from the earnings is to go to the credit of the pooled assets.

Q. Now then how long, under that agreement, and what is the plan, with reference to the payment of these pooled assets? Or in other words, how much of that is going to be held and kept until it is ascertained the amount to make distribution among the depositors?

A. My judgment is——

Q. What per cent is going to be kept for distribution?

A. My judgment is, when a sufficient amount has accumulated to pay as much as 2½ per cent dividends and small amount of reserve necessary for whatever might be necessary to protect the pooled assets, that this 2½ per cent of the pooled assets, however small it is, should be paid.

Q. If I understood you correctly awhile ago, there would not be any taxes against the pooled real estate, because the bank was going to get the income from it and pay the taxes and insurance out of that and take the balance of the income for their trouble?

A. That is true as long as this is carried into the reopened bank, but after the $68,000 is collected from the real estate, then all the residue belongs to the pool and necessarily the taxes and expenses of the real estate would naturally follow; necessarily have to be taken care of, take care of taxes and expenses of handling it.

[fol. 165] Q. Isn't this thing down there, coming down to a final analysis, it would result in this, that with the bank being liquidated by the Supt. of Banks, all the property of every kind would have to bear the expenses of the liquidation?

A. That is absolutely correct, sir, as I understand it.

Q. And under the reopening plan, the pooled bills receivable only, bear any expenses, other than the real estate?

A. Yes, sir, that is correct.

Witness dismissed.

A. C. POWELL, being first duly sworn, testified as follows on behalf of the Petitioner:

Direct examination.

By Mr. Bolton:

Q. Mr. Powell, tell the Court your present occupation?

A. I am engaged as special Liquidating Agent for the State Banking Department during work on re-organization and assisting in the various liquidations throughout the State.

Q. You go to different liquidations, as you are needed?

A. Yes, sir.

Q. Mr. Powell, have you made considerable inquiry into the status of the Peoples Bank & Trust Company, in liquidation?

A. I have.

Q. And familiar with its affairs and the conditions under which it proposes to reopen?

A. I am.

Q. I believe you helped to work out the set-up for the reopening, did you not?

A. I did, yes, sir.

[fol. 166] Q. Mr. Powell, tell the Court your judgment of that proposed reopening plan, as to whether or not it is to the best interest of the depositors and what efforts have been made to safeguard the depositors and see that everything was done that has been done?

A. Before I would agree to any plan for the reopening of the Peoples Bank & Trust Company, I went very carefully into the details of the assets of the bank, both real and contingent and I mean by contingent, unobtainable stock liability; all the loans and other assets were looked into very carefully, and as far as a determination could be made, approximately sound values were arrived at, and using these assets as a basis, we reached, what we are calling the "set-up" for the new bank. We decided that the bank could be opened and operated and the affairs of the old bank could be more satisfactorily and more economically realized on through an open bank than through a liquidation. We reached this conclusion, specially as far as I was concerned, because of the fact that in dealing with as many bank liquidations as I have to deal with, I have be-

come very familiar with the problems that confront a bank in liquidation in the manner of realizing on its assets. Before I would permit myself or permit Mr. Love, as Superintendent of Banks, whom I represent, to be committed to any plan for reopening this bank, one of the features that I had to be convinced about was whether or not it would be better for the depositors generally to take the money that could be collected from the stockholders and use it as a capital structure for the new bank or whether be better to go the limit in our efforts to collect the stock liability and use that in payment as a dividend to the depositors and continue the bank in liquidation. I found that in appraising the possible values of the stock liability that, at the out- [fol. 167] side, we might collect, as I recall it, $70,000 or $75,000; that was a possibility.

Q. *Ver*, how long a period of time required——

A. Now that possibly would be over a period of 26 years to realize on that double liability and that was a possibility, if all of them that we estimated; there was a possibility could have been collected, it would have amounted to approximately 5 per cent of the total deposits in the bank.

Q. You mean as a dividend?

A. As a dividend. I looked at the other side of the question and decided that if we could collect as much as $40,000 or $50,000 and use that as capital structure in a new bank and, with that money, make available immediately a cash dividend to the depositors that it would give to them immediately practically as much cash as they would get, or probably more cash than they would get if we waited to realize on this stock liability. Then I figured further, that in the work-out, there is always a likelihood we will not get as much as estimated; estimates always fall down in a liquidation; I figured then that the difference between the amount that can be realized on the assets in a liquidating bank and on the same assets if placed in the hands of a going bank, would be a minimum of 10% more, to probably 25% more, and weighing these two estimates, I reached the definite conclusion that the interest of the depositors would be best served if we would use this cash as a capital structure, since it would give more advantages in the realization of the assets that it would give if paid as a dividend directly to the depositor and continue the bank as a liquidating bank.

Q. You therefore figured the depositors would gain more than they would lose?

A. Yes, sir, decidedly, and it wasn't until I was convinced of that question, that I was willing to release or [fol. 168] approve any right of action freeing the stockholders in the matter, because I think it is to the best interest of the depositors to do so.

Q. All right, you have been through the bank, the set-up; the plan. I will ask you to tell the Court what in your judgment is the character of the set-up as to its soundness or unsoundness for the reopening of the bank, what you think has been, with reference to the plan and its prospects from the standpoint of the depositors, for its success?

A. I think the bank, as set out, is absolutely sound. You have got 100% of your demand liabilities in cash; you got a reserve set aside to take care of every possible contingencies and I can't think of a bank being set up on a sounder plan than this. The assets that are taken in are taken in at a value with a wide margin, according to our estimate of values, and I think the plan is absolutely sound.

Q. I will ask you this: Under the plan as proposed, you think there is any, under normal conditions, any likelihood of the bank having to close the second time?

By the Court: What you mean by "normal conditions?"

Mr. Bolton: I will say under present normal conditions?

By the Court: I don't think "normal" has any business in there.

Mr. Bolton:

Q. Under present conditions?

A. There is no way you can close the bank, as I see it, under this set-up. There is no demand that could be made on it that will close it that I can possibly see.

Q. You heard Mr. Whiteside's testimony?

A. Yes, sir.

Q. It correctly outlines the plan as you understand it?

A. Yes, sir.

By the Court:

Q. I want to understand this new set-up, Mr. Powell. [fols. 169-173] What is the legal reserve requirements? Maybe I can shorten this: How much available cash will the bank have over its legal reserve?

A. It will have a little over $20,000.00.

Q. Beyond its legal reserve?

A. Yes, sir, and the amount of the reserve on which deposits, and they would have to be construed as such, are deferred, would be about $17,000.00.

Q. Now, then, what I am after is this: I want to know whether, if this bank should reopen, it could pay all preference claims that have been adjudicated against it, or maybe adjudicated against it, plus what liability may accrue to the Union & Planters Bank of Memphis, and still have its legal reserve?

A. Yes, sir.

(Witness dismissed.)

[fols. 174-182] IN CHANCERY COURT OF LEE COUNTY

OPINION OF THE COURT

After patiently hearing all of the testimony relative to the plan of the reopening of the Peoples Bank & Trust Company in Liquidation, without going into details for the reasons thereof the Court is of the opinion that it will be to the best interest of the depositors and general creditors of the bank to be reopened on the plan as set forth in the petition and the testimony.

[fol. 183] IN SUPREME COURT OF MISSISSIPPI

October Term, 1933

No. 31,010

BIRDIE LOWRY DUNN, ET AL., Appellants,

vs.

J. S. LOVE, Superintendent of Banks, in charge of Peoples Bank and Trust Company, in Liquidation, Appellee

ASSIGNMENT OF ERRORS IN BEHALF OF MRS. O. C. DOTY, A RESIDENT CITIZEN OF TUPELO, MISSISSIPPI, AND MRS. LORENE ROBERTS TOLMAN, A RESIDENT CITIZEN OF OWENSBORO, KENTUCKY—Filed Dec. 23, 1933

Now comes appellants, Mrs. O. C. Doty and Mrs. Lorene Roberts Tolman, and file this their assignment of errors in the above styled cause, to-wit:

(1) The decree entered herein is contrary to the law and the testimony.

(2) The decree is not in conformity to the provisions of the depositor's agreement signed and filed in said cause.

(3) The Court erred in entering the decree herein, the terms of said decree being contrary to the provisions of Chapter 251 of the Laws of Mississippi, 1932, in that the assets of the bank in liquidation are by the terms of said decree diminished to the prejudice of depositors and creditors of the bank in liquidation.

[fol. 184] (4) The Court erred in relieving, by the terms of said decree herein, certain stockholders of stock liability.

(5) The Court erred in ordering and directing that certain depositors be paid in full upon the reopening of the bank, while others should only be paid a percentage, and that in deferred payments.

(6) The Court erred in surrendering the assets of the bank in liquidation to the reorganized bank without bond as required by statute.

(7) The Court erred in placing the liquidation of the Peoples Bank & Trust Company in Liquidation under the control of the Peoples Bank & Trust Company as reorganized without bond, and in violation of the statutes pertaining to the liquidation of insolvent banks in the State of Mississippi.

(8) The Court erred in authorizing and directing the Superintendent of Banks to deed to the new bank all of the real estate belonging to the bank in liquidation upon the terms and conditions set out in said decree.

(9) The decree as entered herein violates the provisions of the Constitution of the United States and the Constitution of the State of Mississippi.

(10) The Court erred in the construction placed upon Chapter 251 of the Laws of 1932; the construction placed thereon by the lower court resulting in the impairment of the contract of various depositors and creditors, and said construction violates the provisions of both the Constitutions of the United States and the State of Mississippi.

(11) The Court erred in overruling certain objections and motions of appellants as shown by the stenographer's notes on file.

[fol. 185] (12) The Court erred in permitting the introduction of testimony on behalf of appellees, which was objected to by appellants, as shown by the stenographer's notes and the record on file.

(13) The decree entered herein is not authorized by law, and deprives appellants of their property without due process of law.

(14) The Court was without jurisdiction to hear the cause at the time and place at which it was heard.

(15) The Court was without jurisdiction, and not authorized by law to grant the relief prayed for in the bill, and was wholly without jurisdiction and unauthorized by law to enter a decree not in conformity to the depositor's agreement as shown by the record.

(16) The Court erred in decreeing and authorizing the application of funds derived from the Depositors' Protective Fund to be surrendered and turned over to the new or reorganized bank and to be used by it in the reorganization; said fund being a special trust fund for the benefit of depositors, and there is no authority of law for it to be distributed other than to the depositors by the State Superintendent of Banks.

(17) And for other good and sufficient reasons to be shown at the hearing of the cause.

Respectfully submitted, (Signed) E. C. Sharp, Attorney for Appellants.

I hereby certify that I have this day delivered a true copy of this Assignment of Errors to Flowers, Brown & Hester, attorneys for Appellee, this the 23d day of December, 1933.

(Signed) E. C. Sharp.

[File endorsement omitted.]

[fol. 186] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERROR—Filed Jan. 4, 1934

Comes now the said appellant, Mrs. Nannie McCarty, one of the objectors in above styled cause, prays the reversal of the decree of the Chancery Court of Lee County, Mississippi, in said cause, and assigns the following:

I. The decree of the Court is void.

II. The decree of the Court is unconscionable, inequitable and unjust.

III. The decree of the Court violates Section 10, Subdivision I of the Constitution of the United States of America.

IV. The decree of the Court violates Section 16 of the Constitution of the State of Mississippi.

V. The decree of the Court violates Section 14, Fourteenth Amendment to the Constitution of the United States of America.

VI. The decree of the Court violates Section 14 of the Constitution of the State of Mississippi.

VII. The decree of the Court violates Section 17, Article 3 of the Constitution of the State of Mississippi.

[fol. 187] VIII. For other reasons to be assigned for further hearing.

Geo. T. & Chas. S. Mitchell. (Signed) Chas. S. Mitchell, Solicitors for Appellant.

Certificate

I, Chas. S. Mitchell, one of the solicitors representing Mrs. Nannie McCarty, do hereby certify that I have this day handed in person to C. R. Bolton, attorney and agent for Mississippi State Banking Department at Tupelo, Mississippi, his usual place of abode, a true and correct copy of these Assignments of Error and mailed, postage prepaid, to Messrs. Flowers, Brown & Hester, Jackson, Mississippi, attorneys for said banking department, a true and correct copy of these Assignments of Error.

Witness my signature, this 31st day of Dec., 1933.

(Signed) Chas. S. Mitchell, Solicitor for Appellant.

[File endorsement omitted.]

[fol. 188] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Nov. 27, 1933

Comes now the appellant in the above styled and numbered cause and assigns as error the following rulings and actions of the trial court, to-wit:

1. The lower court erred in granting a decree permitting the People's Bank & Trust Company to re-open, for the reason that the appellant, an acknowledged depositor and creditor of the said bank, filed a written objection to the re-opening of the said bank.

2. The lower court erred in permitting said bank to re-open under and by virtue of Chapter 251 of the Laws of 1932, for the reason that the lower court permitted the bank to re-open under and by virtue of Chapter 251 of the Laws of 1932, and said law is unconstitutional and invalid in that it violates Section 14 and Section 16 of the Constitution of the State of Mississippi by depriving appellant of her property without due process of law, and also impairs the obligation of her contract with the bank. Said law also violates the 14th Amendment to the Constitution of The United States in that said law impairs the obligation of her contract with the bank.

[fol. 189] Respectfully submitted, (Signed) J. Thomas Dunn, Attorney for Appellant.

I hereby certify that I have this day deposited in the United States mails, postage pre-paid, a true and correct copy of the above and foregoing Assignment Of Errors, addressed to Messrs. Bolton & Monegon, Tupelo, Mississippi, and Messrs. Flowers, Brown and Hester, Jackson, Mississippi, their usual place of abode; said attorneys being attorneys of record for the appellee.

This the 31st day of August, 1933.

(Signed) J. Thomas Dunn, Attorney for Appellant.

[File endorsement omitted.]

[fol. 190] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

AMENDED ASSIGNMENT OF ERRORS—Filed Oct. 27, 1933

Comes now the appellant in the above styled and numbered cause and assigns as error the following rulings and actions of the trial court, to-wit:

(1) The lower court erred in granting a decree permitting the People's Bank & Trust Company to re-open, for the reason that the appellant, an acknowledged depositor and creditor of the said bank, filed a written objection to the re-opening of the said bank.

(2) The lower court erred in permitting said bank to re-open under and by virtue of Chapter 251 of the Laws of 1932, for the reason that the lower court permitted the bank to re-open under and by virtue of Chapter 251 of the Laws of 1932, and said law is unconstitutional and invalid in that it violates Section 14 and Section 16 of the Constitution of the State of Mississippi by depriving appellant of her property without due process of law, and also impairs the obligation of her contract with the bank. Said law also violates Section 10, Article 1 of the Constitution of [fols. 191-193] the United States in that said law impairs the obligation of her contract with the bank.

(3) The lower court erred in permitting the said bank to re-open for the reason that said terms and conditions under which the said bank was permitted to re-open are unreasonable and unjust.

Respectfully submitted, (Signed) J. Thomas Dunn,
Attorney for Appellant.

This is to certify that I have this day deposited in the United States mails, postage prepaid, a true and correct copy of the above and foregoing Amended Assignment of Error, addressed to Messrs. Bolton & Monegan, Tupelo, Mississippi, and Messrs. Flowers, Brown & Hester, Jackson, Mississippi, their usual place of abode, said attorneys being attorneys of record for the appellee.

This, the 22nd day of September, 1933.

(Signed) J. Thomas Dunn, Attorney for Appellant.

[File endorsement omitted.]

[fols. 194 & 195] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

Division "B" Sitting

ORDER SUSTAINING MOTION TO DISCUSS APPEAL OF MRS. BIRDIE L. DUNN—January 22, 1934

This cause this day came on to be heard on the Motion to Dismiss filed herein and this court having sufficiently examined and considered the same and being of the opinion that the same should be sustained, doth order and adjudge that said Motion be and the same is hereby Sustained.

(Signed) Geo. H. Ethridge, Presiding Justice.

[fol. 196] IN SUPREME COURT OF MISSISSIPPI

In Banc No. 31,010

BIRDIE LOWERY DUNN, et al.,

vs.

J. S. LOVE, Supt. Banks

DECREE—June 5, 1934

This cause having been submitted at a former day of this term on the record herein from the Chancery Court of Lee County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein, doth order and adjudge and decree that the decree of said Chancery Court rendered in this cause on the 17th day of May, 1933, be and the same is hereby Affirmed. It is further ordered and adjudged and decreed that the appellee do have and recover of and from the appellants and O. C. Doty, L. P. McCarty, Roy D. McCarty, J. Thomas Dunn and Elizabeth Harris, sureties on the appeal bonds herein, all of the costs of this appeal to be taxed, etc.

(Signed) Sydney Smith, Chief Justice.

[fol. 197] IN SUPREME COURT OF MISSISSIPPI

In Banc

No. 31,010

B. L. DUNN, et al.,

vs.

J. S. LOVE, Supt. Banks

OPINION—Filed June 5, 1934

GRIFFITH, J.:

The People's Bank & Trust Company of Tupelo, having become insolvent, closed its doors on December 24th, 1930, and went into the hands of appellee as statutory liquidator. The bank remained in liquidation in the chancery court until May 15th, 1933. At the time the bank closed, it owed $200,000 of public deposits and $457,000 to correspondent banks, which debts to correspondent banks were secured by approximately $700,000 in collateral. Thus the claims aforesaid had to be paid in full before anything was available to depositors and other common creditors; and, by collections made under the liquidation, all of said preferred claims, except a small amount in suspense, were paid and liquidated prior to May 4th, 1933.

In the meantime the depositors had held meetings and had appointed a committee from among their number to represent them in considering and determining what was best to be done. The bank having been in liquidation for more than two years, and the assets which were the more readily collectible having been realized upon, and devoted to the payment of the preference and secured claims aforesaid, it was apprehended and appreciated that the time had arrived and the situation was such that thenceforth the most prudent, patient and sympathetic attention was constantly necessary to realize upon the remaining assets of the bank, much of which was in real estate, not then, or soon [fol. 198] to be, salable except at a ruinous sacrifice. It was the conclusion of the committee, in collaboration with representatives of appellee [illegible] were on the ground, that the best method to pursue, and that by which most could be obtained for the depositors, was to reorganize the bank

to the end that the remaining assets could be administered by an active banking concern, thereby eliminating the continued large expense of liquidation in ordinary course, as well as the inevitable waste and loss incurred, according to common experience, in liquidation.

A plan of reorganization was finally agreed upon, and the plan was presented by petition to the chancery court in the pending liquidation proceedings on May 4th, 1933, under chapter 251, Laws 1932, commonly known as the seventy-five per cent law. Upon the filing of the petition the chancellor fixed the date for the hearing thereof for May 15th, 1933, and selected fifteen persons from among the five thousand depositors upon whom notice of the hearing should be served personally, and ordered that further notice be given by publication in a newspaper published in the county. The citations were served and the publication was made as ordered.

Upon the date appointed for the hearing a few objectors filed elaborate objections. The court upon the hearing found that the petition conformed to the law, was presented by more than seventy-five per cent of the depositors in amount, was supported by the evidence, and that the proposed plan of reorganization would yield by its operation more for the depositors than could be realized by continuing the bank in the ordinary course of liquidation, and an elaborate decree was entered covering the plan and its proposals in every necessary detail.

[fol. 199] We do not restate here the details of the plan, or the numerous objections made thereto; First, because it is not practically possible to do so in the admissible length of a written opinion. Second, because many banks have been reorganized in the state under the statute, and the differences in location, in assets and liabilities, and in the various problems to be met, make it improbable that exactly the same plan has been followed in any great number of them. And, third, because any particular plan is to be viewed as a whole—constituent details as to which objection might seem to be well taken if standing alone, may be found to be overbalanced or offset by the advantages of other constituent details, so that at last the plan as a whole may be available and reasonably sound. We deem it sufficient to say that, except as to the stockholders' liability hereafter to be mentioned, the plan here adopted specifically preserved every item of the remaining assets of the

bank for the ultimate benefit of the depositors, surrendering none of these assets. And, finally, the decree contained suitable provisions that the whole of the administration of these assets by the reorganized bank should be under the continued direction and control of the court, reports thereof to be made to the court from time to time.

At the threshold we are met with the objection that the hearing and the reorganization decree made at the hearing were without authority for want of proper legal notice to the parties in interest. It seems to be contended that a summons to all parties would have to be issued and served as if in the institution of a new suit. But the entire matter and all the parties in interest were already in court and had been for more than two years, or since the original institution of the liquidation proceedings, the notice then given as required by statute being all that was necessary [fol. 200] to the presence of the parties and their continued presence until the liquidation proceedings were concluded. The liquidation proceeding was a quasi-receivership; the petition for the reorganization was filed in and was a part of the liquidation matter, and no original process by way of summons was necessary.

In receivership and in liquidations, such as this, the court acts in all ordinary administration matters upon ex parte petition or motion and without formal notice to the parties in interest. This is a rule of necessity, because usually in these matters there are numerous parties in interest widely scattered, and to require notice of every step to be taken would hinder and embarrass the administration and entangle it in unbearable expense. In matters of great importance, however, vitally affecting the body of the estate, notice by citation ought to be given, and in some jurisdictions the citation is regarded as essential to the validity of the decree in these more important steps in the administration. In Milner v. Gibson, 61 S. [illegible] (2nd.) 273, it was held, however, that notice was not essential under a reorganization petition in bank liquidation proceedings; and in Christensen v. Marine Bank, 150 So. 375, which was in effect a reorganization proceeding, no notice was given. But whether citation under our reorganization statute is required, we are not called on here to decide, because proper citation was in fact ordered and served in the present case; it being necessary to add only that a citation is

not required to be served either with the same formality or for the same length of time as a summons. The requirement in respect to a citation is that it be served in a reasonable manner, and for a reasonable length of time, all the circumstances considered, and that requirement was well enough observed in the matter now before us.

[fol. 201] The entire bank reorganization statute, chapter 251, Laws 1932, has been attacked by appellants as being in violation of specific sections of the state and federal Constitutions. This statute, remedial in its nature and operation, is one among a number of legislative acts devised in the attempt to meet, so far as practicable, the unusual conditions brought about by the present economic depression, the most serious within the present generation, and in the effort to salvage something in the general wreck of things. In considering legislative and administrative efforts at salvage and rehabilitation, in the distressing situation with which the country has been and is yet confronted, we must not permit ourselves to be maneuvered into positions which would view the federal and state Constitutions as sculptured idols, frowning with changeless features upon a changing world; for the true view, as was said by this Court in City of Jackson v. Deposit Bank, 160 Miss., 752, 768, is that "the interpretation of constitutional principles must not be too literal. We must remember that the machinery of government would not work if it were not allowed a little play in its joints"—an expression taken from an opinion of the Supreme Court of the United States in Bain Co. v. Pinson, 282 U. S., 449, 75 L. Ed. 482. When examined in the light of this principle of constitutional interpretation, we can find nothing in the general purpose and scope of the statute which is prohibited either by the state or the federal Constitution, in which connection we may observe that similar statutes have been under review in other states, and their supreme courts have upheld them in every case which has been brought to our attention. As typical of these cases, we may cite McConville v. Fort Pierce Bank, 135 So. 392, and Milner v. Gibson, 61 S. W. (2nd.) 273.

[fol. 202] Particular complaint is made, however, of that portion of section 2 of the act which directs that proper provision must be made in the reorganization plan for the payment of correspondent banks on terms acceptable to them. It is said that this will enable these correspondent

banks to enforce preferential payments to them, although unsecured, and thereby to produce an inequitable discrimination as against other unsecured creditors and depositors. There might be more than one answer to this contention, but it is sufficient to say here that, as heretofore stated, the correspondent banks in this case were all secured by ample collateral, and had been paid in full before this petition for reorganization was presented. The stated provision is, therefore, not involved in this case; and it is elemental that a constitutional complaint cannot be considered by the court when there are no facts in the particular case which would make the complaint other than an academic discussion.

The only serious difficulty in considering the plan of reorganization adopted here is as to that portion of it dealing with the stockholders' liability. The bank had been capitalized at $200,000. During the more than two years that the bank had been in liquidation appellee had been able to collect only about $27,500, and the evidence shows that it was doubtful whether more than $55,000 could ever be collected on this liability, and this over a period of from two to six years. It was proposed, and the plan embraced the proposal, that those of the old stockholders who could do so, would pay in fifty percent of their old stock, and up to the sum of $55,000 in new money, this to constitute the capital stock of the reorganized bank, and that those so paying should be released of the remainder of their stock liability except of course they would, as to that fifty per- [fol. 203] cent, be again liable for that amount on their new stock. The plan embraced the further feature that the $90,000 of old stock not participating in furnishing the required new capital would remain liable as if no reorganization had been effected.

The first and preliminary question upon this issue is one of fact, whether to accept this arrangement and the assurance which it furnished, surrendering the nominal stock liability of $110,000 represented by the stockholders who raised the new capital, would be more advantageous in ultimate returns to the depositors and creditors than to refuse the plan and let the whole matter be worked out in the ordinary course of liquidation. The witnesses estimated that from ten to twenty per cent more would probably be realized from the fifteen hundred thousand dollars, approximately, in remaining assets by the proposed reor-

ganization than by a continuance in ordinary liquidation, and this testimony was undisputed. And thus the second and final question is presented whether any plan of reorganization of an insolvent bank can be availed of which releases any class of stockholders in the original bank of any part of their stockholders' liability, whatever may be the consideration therefor. Appellants contend that this cannot be permitted, for so to do would be to impair the obligation of contracts.

That the legislature in enacting the reorganization statute contemplated that the court should have power to allow an adjustment or readjustment of the stockholders' liability upon a fair and reasonable basis under all the circumstances of each particular case must be accepted as an inescapable conclusion. The legislature knew in enacting the reorgaization statute that it would be next to impossible [fol. 204] to reorganize an old bank with entirely new stockholders, and with those having no connection as such with the old bank. Such new stockholders with new capital would, in all probability, organize instead an entirely new bank, disconnected from the wreckage of the old; and the legislature knew that old stockholders, as a rule, would not be interested in putting the entire amount of their stockholders' liability in cash in new stock in the old bank, and thereby become liable again for the same amount in a new stockholders' liability, in an effort to salvage the wreckage for the principal benefit of depositors. It must have been contemplated, therefore, that reorganization in nearly all cases would have to depend on old stockholders, and that those old stockholders, many of whom would not be coercible by judgment, would, in making the new effort, do so only upon opportunity, by some reasonable arrangement, to work out their own salvation, as well as that of depositors.

It is to be admitted that a stockholder in taking stock in a bank, at the time here involved, thereby became bound in contract to the statutory stockholders' liability in favor of depositors. At the same time the depositor, when becoming such creditor, knew that this contract was one made not only as a part of the existing laws providing for the administration of that liability in favor of all depositors,

and ratably among them by state agencies designated by law for that purpose, but also that the contract so made and the liability so incurred was one subject to subsequent laws reasonably enacted or to be enacted under the sovereign power of the state to legislate and to administer in the vital interest of the general welfare. Milner v. Gibson, 61 S. W. (2nd) 273; Christensen v. Merchants Bank, 150 [fol. 205] So. 375; Love v. Mangum, 160 Miss. 590, 597; Home Bldg. Ass'n. v. Blaisdell, 54 S. Ct. (U. S.) 231. And to say that, so long as a minority, however small, objects, no arrangement may be made by which the stockholders' statutory liability may be transmuted into another form of substantial assurance, given upon fair and reasonable consideration furnished in the arrangement by the particular stockholders immediately concerned, and producing greater benefits to the depositors, and that no law can so contemplate or authorize, although passed in the vital interest of the public welfare and for the distinct good of the greater number of those in immediate beneficial interest, would be to deny the right of the state to legislate in a reasonable and practical manner in respect to matters even of a public nature, and of a distinctly public concern, because there may be a formal intrusion thereby upon the literal terms of the constitutional provisions in reference to the impairment of contracts. That we have now passed beyond that era when such literal and rigidly technical objections may be sustained, in matters of the nature here before us, and when, in ultimate results, beneficial rights have been substantially preserved, is disclosed and demonstrated by modern cases, as, for instance, the recent decision in Home Bldg. Ass'n. v. Blaisdel, 54 S. Ct. (U. S.) 231, commonly referred to as the Minnesota case, and the cases cited in that opinion. In considering the constitutional guaranty against impairment of contracts, courts now definitely look to substance rather than to form—realization upon the value or worth of the contract is the concern of the guaranty, not that any particular method for that realization shall be preserved. As bearing directly upon the question of stockholders' liability, see Re Farmers Exch. Bank, 55 S. D. 190; Nagel v. Ghinger, 171 Atl. 65; Milner v. Gibson, [fol. 206] supra; and compare Andrew v. Merchants Bank, 205 Iowa, 712; Christensen v. Merchants & Marine Bank, 150 So. 375.

We say finally, therefore, of the discussion upon the question of stockholders' liability, and we may have likewise so answered as to the entire of this controversy upon the merits without any elaboration of discussion, that unless the complaining depositor can show that he has been substantially injured in ultimate results, has in fact been actually hurt by the reorganization and the plan thereof, he has no right to complain whether upon constitutional or statutory or administrative grounds.

It is fundamental in all our laws of chancery procedure that before any person may complain or sue in any equity court, he must set up a cause of action of which an essential element is that he must show that he has been injured, that what has been done results in actual harm to him; Federal Land Bank v. Miss. P. & L. Co., 157 Miss. 737; and the like rule applies to all those who object to what has been done in any given situation, whether in the chancery court or on appeal. This elemental rule fully applies also upon constitutional contentions, as was expressly recognized by this Court in New Orleans M. & C. R. Co. v. State, 110 Miss. 290, 305, the Court there having under consideration a constitutional question, and wherein having stated the general rule, as above mentioned, the Court summarized it in the terse expression that, "One must be hurt before he complains." The petition in the case now before us showed, the evidence established, and the court adjudged, that the plan and its execution would result in a substantially greater benefit to the *g*ive thousand depositors, of whom only two [fol. 207] are the appellants here, than had the plan not been adopted. And the case being, therefore, that the appellants are not hurt or injured in any substantial way, it follows that they are not in a position to complain.

Affirmed.

Anderson, J., disqualified, takes no part.

[File endorsement omitted.]

[fol. 208] IN SUPREME COURT OF MISSISSIPPI

In Banc

No. 31,010

B. L. DUNN, et al.,

vs.

J. S. LOVE, Supt. Banks

DISSENTING OPINION—Filed June 5, 1934

ETHRIDGE, J., Dissenting:

I cannot agree to the disposition of this case made by the majority of the Court. I think the proceeding here was not warranted by chapter 251, Laws 1932, and that what was done in this case was contrary to some of the provision- of the chapter. I also think that there was an insufficient and unathorized notice to the depositors of the bank; and, as the hearing was in vacation, and not in term time, and the order setting it for hearing in vacation was not made in term time, that notice must have been given in the manner provided by some valid statute of the state. I also think that if chapter 251, is to be given a retroactive construction, and made to apply to liquidations instituted before the enactment of the statute, the statute is unconstitutional, as impairing the obligations of contracts; and that it also violates the provision- of the state and federal Constitutions as to due process of law, and deprives the depositors of property without due process of law; and that under some of the provisions of chapter 251, and especially section 2 thereof, there is a denial of the equal protection of the law.

The majority opinion does not set forth the scheme involved in this litigation. The bank was closed for liquida- [fol. 209] tion, as shown by the majority opinion, prior to the enactment of chapter 251, and the provisions of that act should not be applied to the proceedings here. In order to get a clear understanding of what is involved in this suit, it is necessary to set forth briefly the outline of the scheme proposed.

The Superintendent of Banks filed with the chancellor of the district in which the bank was located, and under whose

jurisdiction it was being liquidated, a petition for the reorganization of the bank. It set up that the bank had been in liquidation since the 24th day of December, 1930, and that no dividends had been paid to the depositors and common creditors of the bank; but that all bills payable due by the bank to other banks had been paid; also all preferred claims which had been established. That since the closing of the said bank for liquidation some of the creditors and stockholders, acting in conjunction with petitioner, his agents and assistants, and with some of the depositors' committee, have made efforts to rehabilitate the affairs of said bank, and put it in a solvent condition, thus enabling it to reopen for business. That the bank so closed for liquidation had total assets and liabilities of $2,477,114.78. That since the closing of the bank for liquidation, the bills payable of said bank in the amount of $427,500.00, principal sum, rediscounts amounting to $30,000.00, making a total of $457,500.00, together with interest accrued thereon, and all charges for expense of collection by corresponding banks holding same, have been paid; and that the said Peoples Bank & Trust Company now owes no outstanding bills payable, nor is it indebted for rediscounts. That at the time of the closing of the bank for liquidation there was on deposit in said bank public moneys which are preferred claims under the statute, approximately $200,000.00, which [fol. 210] have also been paid. That there are no preferred claims against the bank except a named claim for $2,631.02, which had been adjudged to be a preference, but which at the time of the presenting of the petition was pending on appeal in the Supreme Court.

It is further alleged in the petition that the officers, directors and stockholders of the Peoples Bank & Trust Company agreed with the depositors on a plan for the reopening of the bank, as outlined in the depositors' agreement, copy of which is attached, marked Exhibit 2, to the petition, which will be referred to later; that the depositors' agreement had been signed by a large number of the depositors and creditors of the Peoples Bank & Trust Company, in excess of seventy-five per cent of the amount of deposits and claims against that bank, there being no deposit of public moneys; the agreement being to reduce the balances due them on their deposits to the amount of 25% thereof, this to be a charge against the reopened bank, and to be paid as follows: (a) 5 per cent of the original

amount (or 20 per cent of the depreciated amount) as of date of opening; (b) balance to be paid in instalments whenever collections have been made from the assets taken over from the closed bank shall equal 5 per cent of the present outstanding deposits. All deferred payments are to be without interest. The remaining 75% of said deposits and claims to be charged off against said bank, and set up as special accounts, which are not to be obligations of the reopened bank, but are to participate pro rata in the distribution of certain assets designated as "pool assets", as collected, as hereinafter set forth. That the margin created by the charging out of the 75% of the balances of deposits is to permit the Superintendent of Banks and the directors of the Peoples Bank & Trust Company, with the [fol. 211] approval of the chancery court, to charge out the assets of the bank loans and discounts and other items that are considered uncollectible and of doubtful value at this time, with the understanding that the assets so charged out will be carried in a special account by the bank under the jurisdiction of the chancery court, and collected pro rata for the benefit of the depositors and creditors whose deposits and claims have been depreciated in accordance with the terms of the freezing agreement signed by depositors and creditors.

It is further alleged that under the terms of the agreement the bank was to complete the liquidation of such assets, known as the "Pool assets", under the jurisdiction of the chancery court subject to the supervision of the Superintendent of Banks, and to receive for such handling and collection 10% of the amount collected, and attorneys fees and costs.

It was further provided in the agreement that the stockholders' liability would be released to such of the stockholders as paid 50% thereof; but that the liability of those who did not agree to the reorganization would remain at 100%. It was further provided that approximately $10,000.00 collected from stockholders in excess of 50% of their liability as such, would be returned to them; and, further, that where stockholders had secured their stockholders' liability with collateral, on payment of 50% of the amount of such liability such collateral would be released to them, and they would be released from 50% of their liability on the payment of 50%.

It was further provided in the agreement that the assets of the bank in liquidation, the stocks, bonds and other [fol. 212] obligations held as assets, would be turned over to the reorganized bank to the amount of $467,214.50, carried at a valuation of $216,892.08; and that of the 25% assumed by the reorganized bank, four-fifths would be collected from these assets, the bank as reorganized agreeing to assure collection of as much as $7,500.00 per year, said bank retaining the interest upon such assets during such period as it held them for collection; but if the bank realized more than $216,892.08 from said assets turned over to the reorganized bank, the difference would be paid into the "pool assets". There was certain real estate held by the bank, on which it was also to have the rents during the period in which it held them, and was to have the privilege of buying such property with the approval of the court.

The bank was originally capitalized at $200,000.00, and the stockholders liability at the time of closing amounted to that sum. At the time of the filing of the petition in court the bank had cash in the amount of approximately $109,000.00, which was in excess of the 5% cash which it agreed to pay depositors and creditors under the proposed agreement. The bank, as reorganized, on paying the 25% agreed to be paid, without interest, was to be freed from further obligations to its depositors and creditors.

The petition as originally filed with the chancery court does not show the names and addresses of the depositors; and the order of publication made by the chancellor, or under his direction, does not contain the names and post-office addresses of the depositors, nor does it show where such depositors live. The petition filed by the Superintendent of Banks does not disclose what assets were to be turned over to the bank, and what particular assets were to be placed in the pool; but on motion made by the ob- [fol. 213] jectors, a statement was made up and filed, giving the securities which were to be turned over to the bank, and those which were to be turned over to the pool. The decree of the chancery court on this hearing ratified and approved the scheme of reorganization as set forth, and discharged the bank and the Superintendent of Banks, and the agent of the banking department administering the affairs of the bank and their bondsmen, from further liability.

Chapter 251, Laws 1932, in substance, provides that the Superintendent of Banks may be authorized to reopen any closed bank, with the approval of the chancery court of the county in which the bank is situated, or the chancellor in vacation when at least three-fourths of the depositors and creditors therein, or any number of depositors and creditors holding three-fourths of the deposits in or claims against said bank agreed to the reopening therof, and to accept repayment of their deposits and claims over a period of years, with or without interest, whenever the Superintendent of Banks is convinced that such bank is in a solvent condition, and can repay the amount in accordance with the terms of the agreement for the repayment of the same. But before any such bank shall agree to reopen, the entire plan of reorganization, and any facts connected therewith, shall be submitted to the chancery court, or to the chancellor in vacation, by the Superintendent of Banks, by proper petition, such petition containing a statement of the assets and liabilities of the bank, and such other information as may be necessary to convey to the court or chancellor the true facts with reference to the condition of the bank, to obtain the approval of the chancellor.

[fol. 214] It is provided in section 2 of this chapter that: "When any closed bank has been reopened as herein provided, the general depositors and creditors thereof who have not expressly agreed to accept the repayment of their deposits and claims in accordance with the freezing-of-deposits plan shall be bound to accept repayment of their deposits and claims on the same basis and at the same rate as those general depositors and creditors who have signed the freezing-of-deposits agreement, but this shall not apply to public depositors or to those depositors and creditors holding preferred claims, or secured claims, nor to correspondent banks holding bills payable of the closed bank. Proper provision must be made in the plan for the reopening of such bank to pay public depositors, depositors and creditors holding preferred claims and secured claims, and correspondent banks, on terms acceptable to them; but any arrangement so made shall not operate prejudicially to the rights of the general depositors and creditors of the bank."

It is provided in section 3 of the act: "That this act shall not be construed to give the Superintendent of Banks

the right to diminish the assets of a closed bank to the prejudice of the depositors and creditors thereof, and any assets that may be charged out as doubtful or as losses shall be held by the bank and collected for the benefit of its depositors and creditors, and all amounts so collected shall be held by the bank to be paid to them in accordance with the agreement for the repayment of their deposits and claims."

It will be readily seen from this last section that the assets of the closed banks shall not be diminished "to the prejudice of depositors and creditors." Here the scheme [fol. 215] did diminish the assets by releasing half of the stockholders' liability, which liability is solely for the protection of depositors, and not general creditors. It also releases the reorganized bank from its previous personal liability, and releases all its future acquired property from the obligation to pay its depositors and creditors; it also gives to the bank, instead of to the creditors and depositors, the interest on the assets turned over to the bank, from which to collect the 25% which it agreed to pay its depositors and creditors. And it gives the bank 10% of the amount collected from the pool assets, plus the expense of collecting same, including attorneys' fees. The act does not contemplate that any such scheme would be approved, nor that the bank would be compensated for performing its duty to its creditors; which amounts to the taking of assets belonging to the depositors and creditors. No new capital is to be paid in.

The act does not provide anywhere for the giving of notice to the depositors and creditors to appear at the hearing and contest or litigate the application for reorganization. The notice must therefore be found in some statute, and I have not been able to find a statute authorizing the giving of notice, as was here done by the chancellor. Careful examination of all statutes bearing upon the subject fails to disclose any authority in the chancellor to provide such notice as was here directed to be given. Chapter 143, Laws 1932, is entitled, "An Act to authorize the chancellor and chancery clerk, by special order in each case, to fix the return day for summons, in all matters which the chancellor or the clerk is authorized to hear and decide in vacation, and to require the defendant in

each such case to answer or demur by or before the hour of noon on the return day of such summons, duly executed."

[fol. 216] The statute in full reads as follows:

"Section 1. Be it enacted by the Legislature of the State of Mississippi, That in every matter or cause which the Chancellor, or the Chancery Clerk, is authorized by law to hear and decide in vacation, the summons for the defendant or other adverse party, or party in interest not joining in the bill or petition, unless otherwise expressly provided by law in such particular form or proceeding, may be made returnable at such time as the Chancellor or the Clerk, as the case may be, shall by special order direct; and in every such matter or cause the summons so directed by the Chancellor to be issued, shall require the appearance of the defendant or other adverse party, or party in interest not joining in the proceeding, at such place, within his district, as may be designated in such special order. The summons, unless otherwise especially provided by law in such particular proceedings, shall be executed five days before the return day thereof, and promptly upon such execution returned by the officer executing same to the Clerk who shall immediately give notice of such return, and the character of same, to the Chancellor at his office by mail postage prepaid, in cases pending before the Chancellor. But if such summons be not executed in the manner and for the time required by law as herein provided, another order may be made on the return day thereof by the Clerk in matters pending before him, directing alias or pluries summons to issue returnable as herein designated and so continue until all defendants or other parties in interest be duly summoned; and in cases pending before the Chancellor wherein original process shall not be executed in the manner and for the time required by law as herein provided, the Chancellor may, after notice furnished by the Clerk, as hereinabove provided, make a special order on the return day by previous order fixed, directing the issuance of alias [fol. 217] or pluries summons returnable as may be designated by such order, and so continue until all defendants or other parties in interest shall be duly summoned.

"Sec. 2. That in every matter or cause before the Chancellor, or Chancery Clerk, in vacation, where the summons is made returnable as required by special order of the

Chancellor or the Clerk, as the case may be, the defendant or other adverse party shall appear and answer or demur, after process duly executed, by or before the hour of noon on the return day of such process, unless further time be granted; and in default thereof, the Chancellor or the Clerk, as the case may be, may proceed to hear and decide such matter or cause; or may, by special order, continue and reset the same for hearing and decision, either in vacation or in term time, without further or other notice than such order entered on the Clerk's vacation minutes."

It will be seen from this statute that it contemplates the service of summons upon all parties resident in the state, and publication for non-residents, and does not authorize a chancellor to formulate an independent scheme of notice.

Chapter 58, Code 1930, being the chapter on process, provides for summons and for publication in various cases. Section 2965 of the Code provides that, "A summons shall not issue in any case at law or in chancery until a declaration, bill, petition or other pleading beginning the case shall be filed. The process to bring in defendants, at law and in chancery, shall be a summons, and it shall command the officer to summon the defendant to appear and answer on the return-day."

Section 2969 provides for summons in cases in chancery, to be made returnable on a rule day in vacation sufficiently [fol. 218] distant in time to admit of due service thereof, or on the first day of the next regular day, etc.

Section 2972 provides for a summons by publication, and that in a proceeding in the chancery court it shall be shown by affidavit filed, that a defendant is a non-resident of the state, or not to be found therein, and the postoffice of such defendant to be stated in the bill or petition; or if it be stated therein to be unknown to the complainant or petitioner after diligent inquiry, etc., the clerk shall promptly prepare and publish a summons to such party to appear and defend the suit on a rule day in vacation, or on the first day of the next regular term, if thereby the answer of the defendant would be the earlier required.

Section 2973 of the Code provides how unknown and non-resident defendants may be brought into court. And section 2977 thereof provides for a substitute publication when newspapers will not publish the notice for the compensation provided by law.

A careful reading of the whole statute will show that the publication here made was not authorized by any statute, and it is necessary for a statute to prescribe how such process shall be issued, and this must be found in the law itself. A chancellor cannot take the place of the legislature; such authority cannot be delegated, and there has been no attempt to delegate it in the manner in which it is attempted to be exercised in this case. In J. J. Newman Lbr. Co. v. Pace, et al., 137 Miss. 504, 102 So. 570, it was held that the chancery court is without power to hear and determine a cause in vacation without the consent of the parties thereto. To the same effect is Y. & M. V. R. Co. v. Lawler, 130 Miss. 421, 94 So. 219.

[fol. 219] See, also, upon the subject of publication and process in lieu of summons, Ponder v. Martin, 119 Miss. 156, 80 So. 388; Langstaff v. Durant, 122 Miss. 471, 84 So. 459; Penoyer v. Neff, 95 U. S. 714, 24 L. Ed. 565, and notes on these cases contained in the Law Edition.

In Cooley's Principles of Constitutional Law, 3rd Edition, page 243, in discussing the question of notice and hearing as a part of due process of law, it is said: "To quote the words of an eminent advocate and stateman, 'Everything which may pass under the forms of an enactment is not to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees, and forfeitures in all possible forms, would be the law of the land. Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all the powers in the legislature. There would be no general permanent law for courts to administer or men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees, not to declare the law or administer the justice of the country.' And he gives us a definition of his own, in the concise and comprehensive language of which he was so eminently the master: 'By the law of the land is most clearly intended the general law—a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life,

liberty, property, and immunities under the protection of the general rules which govern society.' ''
[fol. 220] See, also, Cooley's Constitutional Limitations, 8th Ed. page 736, 6 R. C. L. 433, section 442, et seq.; 12 C. J. page 1188, et seq.

It is intimated in the majority opinion, but not held, as I understand, that the liquidation of the bank was already in the chancery court, and that the parties were in court. This certainly is not the law where the hearing is not to be had in term time. I do not think it competent, in a proceeding in liquidation or receivership, to make a final order in the administration of the liquidation of a bank, or in a receivership, without giving parties direct and statutory notice of the time and place of the final hearing. A hearing without notice, even in appointing a receiver, is not to be had except in the gravest emergency where delay would be disastrous. See Burton v. Pepper, 116 Miss. 139, 76 So. 762.

The case of Christensen v. Merchants and Marine Bank, 150 So. 375, mentioned in the majority opinion as possible authority for their opinion, has no application to a proceeding of this kind. In that case Christensen and other depositors filed an original bill in the chancery court, attacking the proceeding there. It was not a case where the court had undertaken to wind up the liquidation of a bank, reorganize a bank, and make a final adjustment between the bank and its depositors and creditors. Had the objectors in the present case filed a bill in chancery against the State Superintendent of Banks, and the bank in liquidation and its officers and directors, a different question would be presented, and they would be in court, and would be required to bring the necessary parties into court.

I think the act here applied to banks already in liquidation would be a violation of the obligations of a contract. [fol. 221] The obligations of a bank to its depositors are determined by the law in force at the time the deposit was made, and at the time the bank was taken over for liquidation as an insolvent institution. It would seem that under decided authority there could be no question about the obligations of a contract being measured by the law in force at the time the contract was made. In McCracken v. Hayward, 2 How. U. S. 608, 11 L. Ed. 397, it was held that the obligation of a contract, within the meaning of a

constitutional provision, depends upon the laws existing at the time it was made. In U. S. ex rel. Hoffman v. Quincy, 4 Wall. 535, 18 L. Ed. 403, it was held that by the obligations of a contract is meant the means afforded by the law for its enforcement at the time of its creation. In Hendrickson v. Apperson, 245 U. S. 105, 38 Sup. Ct. 44, 62 L. Ed. 178, it was held that the obligation of a contract, in the constitutional sense, is the means provided by law to enforce its performance by the parties thereto. Whatever legislation lessens the enforcement of the contract impairs the obligations; and if it tends to postpone or retard the enforcement of the contract, the obligations of the contract are, to that extent weakened.

In Murray v. Charleston, 96 U. S. 432, 24 L. Ed. 760, it was held that the obligations of contracts, within the meaning of the constitutional provision against impairment thereof, depends upon the terms and the means which the law in existence at the time affords for their enforcement.

In Selover B. & Co. v. Welsh, 226 U. S. 112, 57 L. Ed, 146, 33 Sup. Ct. 69, it was held that the obligation of a contract is the law under which it was made. In Johnson v. Fletcher, 54 Miss. 628, it was held that the legislature can- [fol. 222] not increase the exemptions of the existing debts, and that the act of February 12th, 1875, Laws 1875, page 22, does not protect the additional property enumerated therein from the debts existing before its passage. In Minor v. Interstate Gravel Co., 130 Miss. 553, 94 So. 3, it was held that under section 2146 of the Code of 1906 homesteads are exempt from execution by attachment, but prior covenants, or covenants running with the land defeat the homstead exemptions subsequently arising. It was held that an option to purchase lands is a covenant running with the land, and is enforcible against the grantor before or after he marries and occupies it as a homestead. It is also held that such covenant, running with the land, is superior to the homestead right acquired after the execution of covenant. To the same effect is the decision of the United States Supreme Court in Leonidas v. Kearzey, 96 U. S. 595, 24 L. Ed. 793; Gunn v. Barry, 82 U. S. 610, 21 L. Ed. 212; Seibert v. U. S., 122 U. S. 284, 30 L. Ed. 1161. See, also Fisk v. Police Jury, 116 U. S., 131, 29 L. Ed. 587, 6 Sup. Ct. 329; Robertson v. Miller, 72 L. Ed. 517, 144 Miss. 614, 109 So. 900.

It will be seen from the substance of the depositors' agreement, and the laws in force prior to the enactment of section 251, Laws 1932, that the stockholders of a banking corporation were liable to an amount equal to the shares which they own. This liability was for the benefit of the depositors only, and each depositor has a right to have it collected and applied to the satisfaction of depositors. Also, the bank itself was liable to its depositors and creditors; and not only were its assets then owned subject to this liability, but all of its future acquired earnings were subject to be applied to it. The removal of these rights from the reach of the depositors and creditors is certainly an impairment of obligations of a contract where their rights [fol. 223] had become vested, as they did, by the closing of the bank for liquidation. The depositors and creditors, at the time the bank was closed for liquidation, and at the time their deposits were made, had a right to demand the full amount of their deposits. It was a debt owed to the depositors and creditors by the bank at the time of its insolvency, and they had a right to stand upon their contract as it then existed. They could not be compelled to take something less than their demand in full satisfaction thereof.

By article 1 of section 10 of the Federal Constitution, the states are prohibited, among other things, from making anything but gold and silver coin a tender in payment of debts. What the chancery court has done here is not to give the depositors and creditors a money payment for their demand, as it existed when the contract of deposit was made, and at the time the bank went into liquidation; but it compelled them to accept 25% of their demand in money, and for the rest, to accept a pool of assets of very doubtful value in satisfaction of 75% of their demands. In the light of the authorities, this certainly would seem to be a most serious impairment of the obligations of contract.

Recurring to chapter 251, Laws 1932, I think the act is clearly, as to the depositors here involved and possibly even as to future depositors, a denial of the equal protection of the law. The common depositors and the common creditors are compelled by statute to accept whatever either three-fourths of the number of creditors agree for them to accept, or, in the alternative, whatever a lesser number having three-fourths of the credits involved, determine is

best for them to take. Whereas the correspondent bank, although a simple creditor, and having a simple demand [fol. 224] not secured by collateral or pledges, is not compelled to accept such settlement. The terms must be acceptable to such banks, and they may prevent, at their sweet will, a scheme from becoming effectual until they have been paid in full, as seems to have been done in the present case. By the very terms of the act it is not to apply to all persons in the same situation, but as to public depositors, or those depositors and creditors holding preferred claims or secured claims, or correspondent banks, although holding no preferred claims and no securities, the act shall not apply at all. It favors a bank which is a common creditor, having checks and other obligations or collections with the bank when it closed, granting to it favors at the expense of all others.

It seems to me that the violation of the Constitution, on the facts as they exist in this case, is too clear for doubt. With due regard to the views of my brethren, and of the courts which decided Milner v. Gibson, 61 S. W. (2nd) 273, and McConville v. Fort Pierce Bank, 135 So. 392, I cannot consent to let emergency, or even a desperate situation, divert the Constitution from its full and fair operation. The Constitution has been applied in many critical situations, and the principles have not proved hurtful to the general welfare. I am not willing to consign constitutional government to the scrap heap, and return to the age-old practices of autocracy and caprice. I am not willing to dance the Carmagnole in glorification of uncharted and reckless revolution. In my opinion this is a time when the courts should hold firm to constitutional principles, and afford to all litigants their full rights. I do not see how banking can be improved by ignoring the rights of depositors, and lessening the disposition of people to deposit in banks which, if anyone, are responsible for the plight in [fols. 225-232] which they find themselves in this unfortunate period of general depression. It seems to me that the policy of the law has wisely been to give depositors fair treatment and reasonable security; and that we are annulling in our decision some of the most important constitutional safeguards that have been set up by our forefathers for our guidance and protection. I regret the general disposition which seems to be current in public think-

ing, and which is affecting the judiciary of the entire country, to treat lightly constitutional principles. It seems to me that, in going as far as we have, constitutional protection has been practically disregarded.

Goodbye, dear old Constitution, I hate to see you go.
You have been a good companion; I have learned to love you so.
Give me your parting blessing before I breast the wave
Of Revolution's stormy waters, Caprice's rebellious slave;
Before I face advancing Anarchy's dark tempestuous tide,
With no friendly port to shield me, and no polar star to guide.

[File endorsement omitted.]

[fols. 233 & 234] Citation in usual form showing services on J. S. Love, filed Nov. 23, 1934, omitted in printing.

[fols. 235-250] [File endorsement omitted]

IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

PETITION FOR APPEAL—Filed Nov. 5, 1934

To the Honorable Sidney Smith, Chief Justice of the State of Mississippi:

Comes the petitioners, Mrs. Oscar C. Doty and Roy D. McCarty, administrator of the estate of Mrs. Nannie McCarty, deceased, principal appellants, and O. C. Doty, L. P. McCarty, and Roy D. McCarty, sureties on the appeal bond to the Supreme Court of the State of Mississippi, who feeling aggrieved by the judgments rendered in the above styled cause on the 25th day of June 1934, and the 2nd day of October 1934, and hereby pray an appeal from said judgments to the Supreme Court of the United States, for the reasons set forth in the assignment of errors and statement of the grounds of jurisdiction filed herewith.

Appellants respectfully show to the court that since the rendition of the judgments in this case that Mrs. Nannie McCarty, one of the appellants, has departed this life intestate, and that Roy D. McCarty has been duly appointed administrator of her estate by the Chancery Court of Lee

County, Miss., and has been authorized by the Chancery Court of said county, to prosecute this appeal, as shown by certified copy of the decree of the court authorizing said appeal filed herewith.

Therefore appellants pray that their appeal be allowed and that citation be issued, as provided by law, and that a transcript of the record, proceedings and documents upon which said judgments were rendered authenticated according to law, be sent to the Supreme Court of the United States under the law and rules in such case made and provided; and your petitioners further pray that the proper order relating to the required security and granting of an appeal, without supersedeas, be made therefor.

And, as in duty bound your petitioners will ever pray.

E. C. Sharp, Geo. T. & Chas. Mitchell, Attorneys for petitioners.

[fol. 251] [File endorsement omitted]

IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Nov. 5, 1934

Appellant assigns the following errors:

1st. Chapter 251 of the Laws of Mississippi, 1932, is unconstitutional as construed by the Supreme Court of the State of Mississippi.

Appellants urge and assign as errors the action of the court in permitting the Peoples Bank & Trust Company of Tupelo, Miss., to reopen under the provisions of Chapter 251 of Laws of 1932, upon the terms and conditions set out in the petition to reopen, which plan was approved and sustained by the Supreme Court of the State of Miss., and in so doing and by such construction of said Chapter, appellants were deprived of their property without due process of law, and their rights and privileges were abridged in violation of Section 1 of article 14 of the Constitution of the United States.

2nd. Said Chapter 251 of the Laws of Mississippi, 1932, as construed and applied by the Supreme Court of the State of Mississippi, violates article 5 of the Constitution of the

United States, by taking the private property of appellants for a so called public use without just compensation being made to appellants.

3rd. Said Chapter 251 of the Laws of Miss., 1932, as construed and applied by the Supreme Court of the State of Mississippi, violates Section 10 of the Constitution of the United States, in that it makes things other than gold and silver coin tender in the payments of debts due appellants and impairs the obligations of the contracts entered into between appellants and the Peoples Bank & Trust Company of Tupelo, Miss.

[fols. 252-254] 4th. Said Chapter violates article 1, Section 8, paragraph 4 of the Constitution of the United States, in that said Chapter attempts to provide for the discharge of debts as in bankruptcy contrary to the provisions of the above mentioned article of the Constitution of the United States.

5th. Said Chapter 251 of the Laws of Mississippi, 1932, as construed by the Supreme Court of the State of Miss., violates Section 14 of the Constitution of the State of Mississippi, which provides that:

"No person shall be deprived of life, liberty, or property except by due process of law."

6th. Said Chapter violates Section 16 of the Constitution of the State of Miss., which provides that:

"Ex post facto laws, or laws impairing the obligation of contracts, shall not be passed."

7th. The Constitution placed upon said Chapter by the Supreme Court of the State of Mississippi, violates Section 17, of the Constitution of the State of Mississippi, which provides that:

"Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof, in a manner to be prescribed by law; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public."

Respectfully submitted, E. C. Sharp, Geo. T. & Chas. Mitchell, Attorneys for Appellants.

[fol. 255] [File endorsement omitted]

IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER GRANTING APPEAL—Filed Nov. 5, 1934

This day came on to be considered the petition of Mrs. Oscar C. Doty, and Roy D. McCarty, administrator of the estate of Mrs. Nannie C. McCarty, principal appellants, O. C. Doty, L. P. McCarty, and Roy D. McCarty, sureties on the appeal bonds to the Supreme Court of the State of Mississippi, who feeling aggrieved by the judgments rendered in the above styled cause in this court on the 5th day of June 1934, and the 2nd day of October 1934, and the Chief Justice of the Supreme Court of the State of Mississippi, having considered said petition and having reached the conclusion that said appeal ought to be granted:

And it further appearing to the Chief Justice of the Supreme Court of the State of Mississippi, that Mrs. Nannie C. McCarty, one of the principal appellants, has departed this life since the rendition of said judgments and that Roy D. McCarty has been duly and legally appointed administrator of her estate by the Chancery Court of Lee County, Miss., and that the said Roy D. McCarty as administrator of said estate has been authorized by the Chancery Court of Lee County, Miss., to prosecute this appeal:

It is therefore ordered that an appeal be, and it is hereby granted in said cause to the Supreme Court of the United States, to be held in the City of Washington, D. C. from the judgments heretofore filed and entered herein on the 5th day of June 1934, and the 2nd day of October 1934, without supersedeas, and that a certified transcript of the record and all proceedings in said cause be forthwith submitted to the Supreme Court of the United States.

[fols. 256-286] And, it is further ordered that the appeal bond without supersedeas be fixed by the court at $500.00, which bond has been filed herewith is hereby approved and stay of execution of all other proceedings is hereby granted.

Ordered and adjudged this the 5th day of November, 1934.

Sydney Smith, Chief Justice.

[fol. 287] IN CHANCERY COURT OF LEE COUNTY, STATE OF MISSISSIPPI

No. 6583

In the Matter of the Liquidation of PEOPLES BANK & TRUST COMPANY, of Tupelo, Mississippi, by J. S. LOVE, Superintendent of Banks

SUPPLEMENT

To the Petition for the Re-Opening of the Peoples Bank & Trust Company, Filed by Order of the Chancellor at the Hearing of Date of May 15th, 1933

Filed this the 16th day of May, 1933.
(Signed) Byron Long, Chancery Clerk.

[fol. 288] List of Loans and Discounts Carried in Re-Opened Bank

"A"

Name	Number	Amount
A. L. Abernathy	87390	$383.26
T. A. Abernathy	87651	386.47
A. C. Adams	87852	462.62
A. C. Adams	87853	910.98
J. J. Adams	87496	33.50
L. W. Adams	87306	360.24
R. F. Adams	87854	812.39
R. F. Adams	87860	246.57
Vard Adams	87862	99.27
W. A. Adams	85860	65.00
M. R. Akers	87801	30.00
Do	87802	50.00
Do	87803	50.00
Do	87805	50.00
Do	87806	50.00
Do	87807	50.00
Do	87808	50.00
Do	87809	50.00
Do	87810	196.95
W. C. Alred	87814	30.06
Dave Armstrong	86862	56.12
Geo. W. Armstrong	87719	89.74

"B"

S. T. Baggett	87307	39.63
C. B. Baker	87042	27.71
Do	87043	59.09
Charlie C. Baldwyn	87925	13.50
G. C. Ballard	75008	276.83
Do	75009	1,000.00
Do	75010	1,000.00
Do	75011	1,000.00
Do	75012	1,250.00
J. S. Ballard	87870	95.90
S. L. Ballard	87469	28.73
Clyde Barber	87818	15.00

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
Do	87910	10.00
Do	87966	10.00
E. T. Barnett	87771	15.85
Keith Barnett	87822	12.37
O. R. Bates	87977	385.77
Do	87976	10.00
Dee Bean	87625	232.60
Tracy Bean	87300	149.63
W. H. Bean	87627	409.61
Do	87626	22.20
Louis Berryman	87498	45.10
D. W. Bethay	87137	132.35
Edd Bethay	87499	80.00
Betts Market & Grocery Co.	84003	100.00
Jessie B. Bickerstaff	87195	80.51
B. Black	87891	395.44
C. E. Black	87981	253.25
[fol. 289]		
Melvin Black	87871	196.16
M. L. Black	87500	13.33
Mrs. Vera Blair	78769	5,000.00
Do	78770	5,000.00
Do	78771	5,000.00
Do	86049	1,878.60
Do	86046	2,500.00
Do	86047	5,000.00
Do	86048	4,689.23
W. A. Blair	73531	4,515.61
Do	79123	84.40
C. P. Blythe	87869	42.10
Jeff M. Boggan	86945	49.60
Jno. M. Boggan	86814	1,399.07
J. W. P. Boggan	81593	235.44
Do	86594	789.58
Ida Bolton	87443	112.52
W. D. Bolton	87982	30.00
W. H. Bourland	87502	8.19
Bert Brewer	87750	45.00
J. W. Briley	79302	1,154.00
J. S. Brock	46271	1,354.89
S. W. Brooks	87784	385.32
W. T. Brown	85300	967.00
B. A. Brumley	87086	35.04
L. H. Bryan	87664	20.89
W. H. Bryson	84120	480.00
Jim Bucy	86035	1,728.10
Do	87128	782.54
T. G. Burgess	87505	87.20
Do	87506	180.40
Do	87837	1.00
E. D. Burk	87311	194.08
S. T. Burleson	87055	87.58
W. D. Burt	86659	400.00
W. A. Butler	86487	691.51
"C"		
Camp Creek School	83880	500.00
Homer Cantrell	87509	48.50
Roy Carroll	87855	77.24
Troy Carroll	87856	68.26
H. S. Carruth	87769	55.93
A. L. Cassell	86947	5.11

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
W. F. Caughran	87897	25.00
T. L. Caygle	85586	11.00
Cool Cayson	87917	2.50
C. R. Chisholm	85852	500.00
Do	85853	1,000.00
A. W. Christian	86762	357.35
Do	86761	357.35
R. C. Clark	87687	200.99
W. W. Clayborne	82120	3,398.78
Do	82121	3,750.00
Coy G. Clayton	87915	5.00
[fol. 290]		
Coy G. Clayton	87960	5.00
R. F. Coffee	86994	139.58
C. L. Coggin	87873	110.70
I. B. Coggin	87865	94.25
Miss Nobia Coggin	87841	20.68
Colbert Limerock Asphalt Co	85582	3,583.33
F. H. Collins	86229	369.42
Mrs. L. W. Collins	76390	5,724.55
S. G. Comer	87748	17.50
Troy Comer	87902	3.90
Do	87864	70.37
C. D. Conner	85999	1.26
Do	87674	140.92
V. Conoway	87275	278.88
W. H. Conwill	87913	9.09
W. N. Conwill	87516	58.47
C. O. Cooper	87517	25.69
T. C. Cooper	87519	64.64
O. L. Cox	87520	37.73
Peter Cox	87151	241.14
N. H. Crenshaw	87923	377.55
Geo. Crump	86313	265.57
L. F. Cummings	87934	10.00
Do	87935	5.00
Mrs. Jessie Cunningham	82357	164.13
Mary Frances Cunningham	87709	196.89
"D"		
C. M. Dabbs	87786	20.00
Do	87787	20.00
Do	87788	20.00
Do	87789	20.00
Do	87790	20.00
Do	87791	20.00
Do	87792	20.00
Do	87793	20.00
Do	87794	20.00
Do	87795	20.74
Josie Dabbs	87521	50.00
S. T. Dabbs	87522	22.00
W. T. Darling	81235	186.51
J. E. Davenport	87844	50.00
Do	87846	50.00
Do	87845	50.00
Do	87847	50.00
Do	87843	50.00
Do	87850	50.00
Do	87849	50.00
Do	87848	50.00
Do	87851	205.62

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
D. O. Davis	87753	200.00
G. W. Davis	87722	75.17
O. C. Davis	87840	67.60
Tom Davis	87238	180.66
E. H. Dean	87835	62.16
[fol. 291]		
R. B. Dean	83468	323.33
R. B. Dean	84359	184.33
R. L. Dean	87080	26.00
Boyd Dill	87956	130.97
Do	87956	7.50
Do	87957	10.00
H. G. Dodson	87623	192.52
W. T. Dugard	85169	11.00
C. E. Duke	87811	187.79
T. U. Duke	87058	35.05
Sam B. Durham	87778	75.23
H. G. Duvall	85016	172.94
"E"		
W. H. Eason	86899	792.02
Do	86900	314.74
Do	87941	6.80
W. L. Easterling	85958	4,500.00
J. M. Edwards	87885	77.04
J. B. Epting	83775	170.00
Equitable Finance	87838	125.00
Do	84113	1,570.48
Do	84115	234.82
Do	85034	1,373.31
Do	85035	2,835.52
E. H. Erwin	87287	77.31
Ernest Evans	80626	444.60
"F"		
J. T. Fennell	87975	104.25
Do	87974	17.50
Edwin C. Finley	85114	300.00
Mrs. Helen M. Foster	87620	198.04
D. W. Fowler	85592	100.00
E. F. Fowler	87530	33.38
H. H. Franks	87903	10.00
Do	87961	10.00
M. T. Franks	87762	93.22
Do	87904	10.00
Do	87962	10.00
J. W. Franks	87918	10.00
Do	87968	25.00
Marvin Franks	87765	42.25
Do	87907	10.00
Do	87958	5.00
Do	87959	10.00
Nolen Franks	87906	10.00
Do	87963	10.00
C. C. Franks	87969	10.00
Ulen Franks	87906	10.00
Do	87964	10.00
A. M. Furr	86618	260.00
J. D. Furtick	87708	1,094.72

[fol. 292]

List of Loans and Discounts Carried in Re-Opened Bank—Continued

"G"

Name	Number	Amount
Mrs. Irene E. Garmon	87136	5,758.80
Herman Goggans	87033	8.86
J. B. Goodwin	87532	50.29
Do	87533	25.56
Do	87534	31.54
V. S. Googe	84534	1,600.00
Velma Gracey	83814	125.00
W. W. Green	87870	136.38
Mrs. Daisy H. Grissom	86476	49.10
Guarantee Mortgage & Securities Company	85266	15,000.00
Do	86057	840.00
Sam J. Gunter	85699	55.51
J. W. Gurley, Jr	86389	52.24

"H"

Chester Hadley	87945	3.90
John Hall	86722	56.14
W. E. Hallmark	86443	103.22
Harris Drug Co	86773	603.70
C. P. Harris	78864	694.07
D. W. Harris	86993	27.30
J. R. Helms	87983	166.74
C. T. Henry	87540	20.30
A. L. Herndon	87539	41.00
S. J. High & Co. (D. W. Robins)	84985	2,500.00
Do " " "	84986	2,500.00
Do " " "	84987	2,000.00
Do " " "	85988	4,000.00
Do " " "	84990	3,000.00
Do " " "	.....	.....
Do (J. M. Thomas)	84991	2,000.00
Do " " "	84992	2,000.00
Do " " "	84993	2,500.00
Do " " "	84994	2,000.00
Do " " "	84995	2,000.00
Do " " "	85737	1,161.50
E. D. Hinds	85718	1,265.33
Stanley R. Hinds	85410	67.59
G. W. Hitt	85164	275.10
R. W. Holcomb	87826	201.48
C. M. Hood	87775	82.63
C. M. Hood	87774	52.44
Do	87779	56.06
E. Douglas Hood	85884	81.81
Do	87780	20.30
Needham Howard	87866	67.50
C. K. Hudson	84801	242.75
S. J. Huey	86599	254.78
E. B. Hulsey	87465	204.41
D. S. Hunter	87698	40.15
J. P. Hunter	78863	1,904.98

[Fol. 293] "J"

A. L. Jagoe	84123	4,650.00
T. A. Jenkins	85673	4,366.54
Cornelius Jernigan	87861	8.57
G. W. Jobe	87898	90.72
D. R. Johnson	85960	507.49
Jiles Johnson	87986	12.50
J. J. Johnson	66119	70.00
Do	87651	6.75

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
M. S. Johnson	87474	9.13
V. O. Johnson	84330	284.62
W. L. Johnson	87726	109.34
B. W. Jones	84955	1,600.00
J. W. Jones	87832	2,476.23
Wiley Jones	87901	76.54
Do	85355	50.00
Journal Review Publishing Co	87139	2,670.67
W. H. Joyner	86955	7.62
"K"		
B. C. Kennedy	87928	15.00
C. O. Kennedy	87230	14.90
Jno. Kilgore	87026	4,232.10
Do	87027	4,232.10
Do	87028	4,232.10
Do	87029	4,232.10
Do	87030	4,232.10
Do	87031	4,232.10
Linda J. Kincannon	85053	325.00
W. Oliver Kincannon	85879	50.12
J. F. Kingsley	87274	304.98
J. T. Kizer	81092	335.81
E. E. Knight	87154	380.52
W. C. Kyle	87366	388.55
"L"		
A. P. Lackey	87717	59.03
W. A. Laney	87859	196.83
H. M. Lauderdale	87727	30.00
L. C. Lawhorn	87900	230.73
Ross Lawhorn	87677	58.31
Miss Birdie E. Lawson	87652	149.87
J. H. Ledyard	86353	2,373.49
Do	83895	118.34
Do	86342	2,040.00
Do	86343	2,040.00
Do	86344	2,040.00
Do	86345	2,040.00
Do	86346	2,040.00
Do	86347	9,503.17
Do	86348	2,580.00
Do	86349	2,580.00
Do	86350	3,440.00
Do	86351	4,300.00
D. C. Lester	87059	188.91
C. E. Lilly	83600	2,224.43
Byron Long	79815	68.42
Do	80083	150.41
[fol. 294]		
Byron Long	86294	323.61
Do	86295	2,500.00
Do	86296	2,500.00
Do	86297	2,711.50
Do	86273	1,400.00
Do	86274	890.01
Do	86275	1,775.52
C. E. Long	87817	3,716.95
Do	82409	3,240.00
Do	86977	33.70
E. M. Long	87421	33.70
	86681	100.00

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
Huey Long	87005	410.60
Do	87006	4,937.84
Do	87007	1,627.90
J. H. Long	81313	657.32
Do	81314	700.00
Do	81315	700.00
Do	87816	65.24
R. K. Logino	84516	663.86
A. L. Lowery	87219	239.50
J. A. Lowery	87215	1,200.00
Do	87216	1,200.00
Do	87217	1,200.00
Do	87218	1,168.00
J. T. Lucas	87092	120.00
Joseph H. Lumpkin	87833	534.65
J. M. Lumpkin	85135	555.35
S. E. Lumpkin	87759	190.61
Do	87760	325.53
[fol. 295] "Mc"		
Carl McCaleb	87109	20.00
L. P. McCarty & Son	85312	4,504.72
Ike McCollum	86998	428.36
Ike McCollum	86999	3,585.95
Ike McCollum	87000	4,235.56
Ike McCollum	87001	4,235.56
Ike McCollum	87002	4,655.43
E. G. McCoy	87812	65.00
J. H. McCullough	86611	59.48
R. H. McCullough	86854	514.11
I. W. McDaniel	87912	27.40
W. A. McDonald	84640	369.50
Anna L. McDuffie	87463	71.98
W. O. McGaughy	87552	1,924.65
Mrs. Jesse H. McGee	86522	1,536.43
Tyson McGee	85740	330.83
G. W. McQuire	85908	431.23
G. W. McQuire	85950	1,050.00
J. W. McKissack	80323	246.45
B. E. McLarty	87037	61.22
A. A. McLeran	64089	650.00
A. A. McLeran	84420	1,800.00
J. M. McWhorter	87767	97.94
"M"		
Guy Marlin	87481	25.00
J. E. Martin	87683	102.18
W. E. Martin	85505	513.43
W. W. Martin	85694	77.07
Mrs. Hattie K. Matthews	87257	17.50
Mrs. Hattie K. Matthews	84781	25.00
Mrs. Hattie K. Matthews	84782	25.00
C. H. May	84783	325.00
L. C. Maynard	87700	305.85
Lou Merritt	87756	23.10
Milam Mfg. Co.	87553	175.60
L. G. Milam	87868	157.10
L. G. Milam	86078	2,000.00
L. G. Milam	86079	2,000.00
L. G. Milam	86080	2,000.00
L. G. Milam	86081	2,000.00
	86082	2,000.00

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
L. G. Milam	85083	2,000.00
L. G. Milam	86084	2,000.00
L. G. Milam	86085	2,000.00
L. G. Milam	86086	2,000.00
L. G. Milam	86087	2,000.00
L. G. Milam	86088	2,000.00
L. G. Milam	86089	2,000.00
L. G. Milam	86090	2,000.00
L. G. Milam	86091	5,000.00
L. G. Milam	86092	3,991.66
T. M. Milam	87458	168.40
E. A. Mills	87978	52.18
E. F. Mills	87979	66.10
E. F. Mills	87980	132.56
H. F. (Hubert) Ming	87813	108.18
D. V. Mitchell	85668	282.62
[fol. 296]		
D. V. Mitchell	85667	212.33
Geo. T. Mitchell	85758	125.00
Geo. Monaghan	87556	15.00
James H. Monaghan and Mrs. M. E. M	87555	23.16
J. C. Monts	85728	10.25
J. N. Monts	87160	50.00
O. L. Monts	86692	81.66
J. M. Moore	87094	14.44
H. R. Morgan	86637	12.80
J. M. Morgan	87729	327.00
T. L. Morgan	83816	43.00
T. L. Morgan	87332	102.00
W. E. Morgan	87705	30.00
W. G. Morris	87147	200.00
Joe Morrow	87560	26.63
W. A. Morrow	87229	744.95
C. G. Murff	87882	6.90
C. G. Murff	87134	99.93
M. M. Murphy	87113	81.76
L. H. Murphy	84185	325.00
L. H. Murphy	84186	350.00
L. H. Murphy	84187	350.00
L. H. Murphy	84186	350.00
Oscar Murphy	85743	324.00
Oscar Murphy	86287	129.87
T. J. Murphy	87315	94.75
J. P. Myers and O. C. Elliott	87463	98.84
"N"		
S. L. Nabors, B. C. Rankin, Sr., N. C. Patterson	87564	21.51
T. S. Neely	87107	1,900.00
Nettleton Fox Hunting and Fishing Assn	84066	2,900.00
Miss Verda May Newman	85357	26.07
J. R. Nichols	85891	98.82
J. M. Northington	86042	28.62
"O"		
George H. Oliver	78355	10,242.75
"P"		
J. O. Palmer	87732	49.19
Bill Pannell	87889	5.00
W. H. Park	85696	619.66
Allen Parker	87680	125.00
J. A. Parker	86697	274.37

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
J. A. Parker	87568	40.47
L. B. Parker	87972	216.54
L. B. Parker	87971	12.50
G. H. Partlow	87796	362.71
G. H. Partlow	87797	362.71
G. H. Partlow	87798	362.72
Glen Partlow	87052	100.00
A. J. Patterson	87124	7.10
A. J. Patterson	87125	81.11
A. J. Patterson	87126	243.61
Henry B. and Nancy L. Patterson	87567	14.15
J. A. Patterson	87305	28.38
J. L. Patterson	87327	40.00
[fol. 297]		
J. J. Paulk	87188	104.50
Ewell Payne	87470	215.74
H. H. Payne	87984	107.20
A. G. Pearce	87819	92.43
B. M. Pearce	86770	85.54
H. K. Pettigrew	87051	30.00
H. K. Pettigrew	87050	30.00
W. A. Pettigrew	87858	61.90
M. T. Pettit	87135	120.00
Lee Phillips	80350	365.00
P. W. Pitts	87304	24.65
J. W. Plunkett	87225	47.76
S. W. Priddy	87776	203.50
Mrs. W. G. Prude	87777	15.00
Albert Pruitt	87954	25.00
J. F. Pryor	80482	1,728.84
H. Putt	87288	173.36
G. G. C. Pyle	86012	169.46
"R"		
E. R. Rankin	87162	50.00
John Raper	85890	112.70
D. E. Raspberry	87867	60.59
B. A. Ray	87872	101.91
J. M. Rea	87572	43.17
R. F. Reed	86838	1,279.50
R. F. Reed	86839	1,279.50
Wades S. Reeder	86246	427.88
Wade S. Reeder	86247	2,144.63
F. W. Reedy	81165	4.85
Mrs. Mayfield Reese	84199	420.34
J. W. Repult	86888	72.46
E. J. Rich	85588	111.75
J. D. Ridings and J. L. Atkins	76573	38.23
Ollie Ridings	87757	184.39
Charlie Rife	80259	308.91
H. D. Riley	84642	36.75
H. D. Riley	85307	48.20
H. D. Riley	85587	50.00
J. L. Riley	87462	110.33
S. C. & J. H. Riley	87574	260.57
A. C. Robbins	87921	326.16
G. W. Robbins	87922	23.81
Mrs. W. H. Roberts	86708	133.84
Wood J. Roberts and Sweet Roberts	87576	358.84
D. W. Robins	87297	11,350.00
D. W. Robins	87298	11,350.00

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
Mrs. H. L. Robins	87736	843.63
Nell Robins	80340	270.28
W. N. Robins	80567	188,63
W. N. Robins	83372	139.57
W. N. Robins	84317	355.75
G. S. Roebke	87737	204.52
B. A. Rogers, et al	84126	866.45
J. J. Rogers	87471	61.43
J. J. Rogers	87166	120.00
J. J. Rogers	87167	480.00
Van K. Rogers	86808	805.50
Van K. Rogers	87857	212.55
[fol. 298]		
Mrs. W. R. Rogers	87164	78.00
F. W. Roper	81967	187.50
W. G. Roper	87751	164.96
Lon Ross	87839	332.57
Fronie Rowan	85688	90.00
M. T. Rowland	84958	103.10
Dave Ruff	87658	207.33
Dave Ruff	87660	379.77
Graves Ruff	87920	99.67
J. G. Ruff	87472	97.40
"S"		
William Sampson, Maggie Sampson	87578	92.16
J. G. H. Sanders	86721	19.00
Herman Schlicht	87874	61.98
W. J. Schumpert	87943	1,556.83
G. C. Scribner	87581	62.54
R. E. Searey	87741	17.20
L. M. Sewell	86321	103.52
G. T. Sheffield	87823	125.00
G. T. Sheffield	87824	125.00
P. L. Sheffield	87816	5.00
P. L. Sheffield	87929	11.43
P. L. Sheffield	87930	249.87
P. L. Sheffield	87931	20.00
P. L. Sheffield	87932	13.00
J. W. Shirley	87892	199.50
J. W. Shirley	87893	415.68
J. W. Shirley	87894	285.62
H. R. Simpson	87873	50.00
C. B. Sisk	87583	70.81
L. E. Skinner	86774	30.87
C. E. Smith	87834	83.82
D. D. Smith (assumed by A. T. Siddall)	87886	55.00
Felix Smith	87970	44.08
L. L. Smith	86444	100.00
P. E. Smith	80952	860.09
R. G. Smith	86853	207.27
W. G. Smith	87742	556.74
L. S. Snipes	87468	85.56
Purd W. Sparks	85900	104.99
Purd W. Sparks	85845	247.46
Purd W. Sparks	85846	317.21
E. L. Speed	85847	109.21
J. V. Spralding	87152	394.91
Mrs. Louis Burton Stacy	87713	254.28
Leonard Standifer	87985	20.00
John M. Stanton	87590	93.00

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
Star Grocery Co	86589	100.00
Star Grocery Co	86590	100.00
Star Grocery Co	86591	100.00
Star Grocery Co	86592	803.75
Aurora Stevenson	80927	124.70
H. E. Stone	85659	125.00
S. P. Stone No. 8	83292	2,264.95
C. C. Strain	87711	202.87
C. C. Strain	84042	106.56
J. H. Strain	87827	15.12
R. C. Strain	86729	140.00
[fol. 299]		
G. C. Sturdivant	86214	555.30
G. C. Sturdivant	86215	432.28
G. C. Sturdivant	86216	395.55
G. C. Sturdivant	86217	616.87
N. N. Sullivan	87591	41.91
B. L. Summers	81302	158.98
Verma Lee Summers	86373	34.51
"T"		
W. S. Tally	71118	128.85
W. S. Tally	71119	150.00
W. S. Tally	87053	275.00
H. J. Tatum	85848	99.54
E. W. Taylor	79029	300.00
E. W. Taylor	79030	300.00
E. W. Taylor	79031	1,400.00
E. W. Taylor	86256	234.61
E. W. Taylor	86257	107.21
E. W. Taylor	86258	250.00
E. W. Taylor	87236	34.84
E. D. Temple, Mrs. Pearl Temple	87593	148.35
Dewey Thomas	87641	214.90
J. M. Thomas	85211	3,114.25
P. K. Thomas	84206	1,004.00
P. K. Thomas	84715	2,559.63
P. K. Thomas	84716	2,559.63
P. K. Thomas	84916	639.40
P. K. Thomas	85657	527.89
P. K. Thomas	86027	2,497.98
P. K. Thomas	86028	1,697.73
P. K. Thomas and Albert Ritter	80497	1,500.39
Virginia Thomas	82985	550.00
Grider Thompson	87914	1,597.52
Ike Thompson	87515	329.45
Lee Thompson	86636	2,199.56
L. K. Tilghman	86984	15.00
E. R. Todd	87594	95.00
Solomon Tompkins	87896	200.00
Shelby Topp, Jr	78950	400.00
Shelby Topp, Jr	78951	300.00
Shelby Topp, Jr	85391	300.00
W. D. Topp	86166	500.00
W. D. Topp	86167	1,000.00
W. D. Topp	86168	1,000.00
W. D. Topp	86169	1,100.00
J. D. Trantham	87743	332.30
C. T. Trapp	84614	636.48
W. L. Trapp	87595	30.10
W. W. Trice	86231	856.80

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
F. L. Tucker	87299	13.13
Mrs. Sam Tune	87696	97.07
Tupelo Brick & Tile Co.	85447	668.12
Tupelo Insurance Agency	84886	467.44
D. E. Turner, Jr.	87694	214.46
"W"		
C. L. Wade	65092	150.00
Ollie Wade	87952	2.50
J. M. Walker	87596	58.20
W. S. Walker	87766	13.40
W. S. Walker	87908	10.00
W. S. Walker	87965	6.65
[fol. 300]		
G. W. Walls	87171	76.62
T. C. Watson	87040	261.72
H. H. Welch	87597	58.88
P. G. Wesson	81958	2,000.00
F. B. West	86248	100.00
A. F. Westmoreland	87054	61.08
J. C. Westmoreland	85822	591.06
T. H. Westmoreland	85382	200.00
T. H. Westmoreland	86154	59.88
Mrs. J. G. Whitehead	87665	153.40
J. G. Whitehead	80367	115.02
A. L. Whitesides	85373	182.50
E. W. Whitesides	81366	149.05
J. L. Whitesides	87699	150.60
Otis Whitlock	87060	157.90
R. P. Whitlock	87897	150.00
G. B. Wilburn	87655	254.01
T. C. Wilburn	87095	40.00
Ned Wiley	53453	500.00
Chas. Williams	86454	3.00
H. V. Williams	87201	10.00
H. V. Williams	87284	10.00
H. V. Williams	87374	10.00
H. V. Williams	87429	10.00
H. V. Williams	87617	10.00
H. V. Williams	87924	20.00
J. T. Williams	87947	27.78
J. T. Williams	87946	10.00
L. A. Williams	86417	185.82
Z. B. Williams	87255	82.93
Z. B. Williams	87256	30.90
V. M. Willie	86975	3.84
Raymond Willis	87926	10.00
R. B. Willis	85956	194.80
R. B. Willis	87189	38.63
R. B. Willis	87235	26.00
R. B. Willis	87442	15.00
R. B. Willis	87239	54.60
R. B. Willis	87967	2.04
C. G. Wilson	97927	67.00
John A. Wilson	87602	93.67
L. E. Wilson	84243	2,141.45
S. D. Wilson	87657	743.16
W. R. Wilson	87602	1.73
L. A. Witt—G. W. Jobe	87602	7.00
A. M. Wiygul	87606	17.00
E. A. Wiygul	87607	82.15

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
J. G. Woods	87667	231.83
Jesse Woodruff	87895	2.00
R. E. L. Woodward—Ophelia Woodward	87608	544.01
R. E. L. Woodward	87483	1.00
Anthony Word	87911	27.75
W. J. Wren	87129	415.27
Wright Motor Company	84726	2,442.46
Mrs. Carrie May Wright	78692	33,81.48
Mrs. Carrie May Wright	87949	83.96
"Y"		
G. R. Yancy	87746	450.00
[fol. 301]		
W. I. Yielding	87815	900.00
R. P. Young, D. P. Young and E. L. Young	87614	66.21
Rose Young and C. A. Tapscott	87615	3.06
Total Loads and Discounts carried in Re-opened Bank		$472,722.01
After giving off-set to Capital Structure in full		19,186.44
Amount Set Up in Re-opened Bank		$491,908.45
		$216,892.08
Equity in Loans and Discounts carried in Re-opened Bank		$275,016.37
[fol. 302]		
"A"		
F. L. Abernathy	87673	87.98
J. C. Adams	87493	28.19
Mrs. J. C. Adams	87494	969.71
J. E. Adams	87495	29.52
H. Agnew	87440	19.49
H. Agnew	87441	577.56
M. R. Akers	54629	566.67
M. R. Akers	56450	566.67
M. R. Akers	54631	566.67
E. F. Anderson	73518	418.04
W. T. Anderson	85344	120.87
John W. Anglin	83545	15.79
Claud Armstrong	85617	108.00
J. A. Armstrong	86595	208.68
L. Armstrong	86937	52.91
B. S. Arnold	87720	45.98
T. D. Austin	86187	125.50
"B"		
I. G. Bailey	82262	104.76
Word H. Baker	83063	702.03
Word H. Baker	83943	829.55
Word H. Baker	83944	1,000.00
Word H. Baker	83951	814.69
Word H. Baker	83962	3,800.00
J. H. Baldwyn	86251	62.35
P. W. Barinowski	84402	81.32
Tandy Bean	86936	112.86
R. W. Beck	86069	50.84
R. C. Beckham	87877	477.54
Mrs. R. C. Beckham	87878	35.06
Mrs. R. C. Beckham	87879	719.85

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
Mrs. R. C. Beckham	86988	112.11
Homer F. Benson	87234	77.00
J. I. Berryhill	85679	261.87
J. I. Berryhill	85962	1,366.32
J. I. Berryhill	87014	6.40
J. R. Bettersworth	86314	29.78
F. W. Boggan	87880	14.90
F. W. Boggan	87685	75.61
W. C. Boland, Jr.	86747	1,000.00
W. C. Boland, Jr.	86748	1,300.00
C. W. Bonner	87881	6.40
C. W. Bonner	86585	85.60
Finis Brooks	81120	154.82
Finis Brooks	82260	52.43
Raymond Brooks	85754	20.00
D. N. Brown	86058	462.36
D. W. Brown	77926	1,647.02
J. M. Brown	86598	781.63
J. M. Brown	87825	49.95
F. B. Bryan, Inc.	79437	2,040.00
Frank Bryan, Inc.	85207	40.97
Frank Bryan, Inc.	85205	445.00
Frank Bryan, Inc.	85204	118.64
Frank Bryan, Inc.	85203	1,760.98
Frank Bryan, Inc.	85206	200.00
Frank Bryan, Inc.	79688	896.54
[fol. 303]		
R. E. Bryson	83878	350.00
Buchanan Motor Co	79957	1,119.67
Buchanan Motor Co	80360	1,500.00
Buchanan Motor Co	80597	2,040.00
Buchanan Motor Co	83198	250.00
N. B. Buchanan	78928	536.29
N. B. Buchanan	79802	525.00
N. B. Buchanan	80471	1,530.00
N. B. Buchanan	80472	1,530.00
N. B. Buchanan	80473	2,550.00
N. B. Buchanan	80474	2,091.00
N. B. Buchanan	80475	2,040.00
N. B. Buchanan	80476	4,447.98
N. B. Buchanan	82808	96.96
Mrs. N. B. Buchanan	80564	163.19
Edd Burgess	87503	200.00
E. P. Burgess	78929	200.00
E. P. Burgess	78930	200.00
E. P. Burgess	78931	100.00
Frank Burgess	87504	50.49
James L. Burgess	87507	148.46
T. P. Burleson	86105	27.00
Grady Burt	87508	183.88
E. H. Burton	85927	12.52
E. H. Burton	85928	50.00
E. H. Burton	85929	50.00
E. H. Burton	85930	50.00
E. H. Burton	85932	50.00
E. H. Burton	85933	50.00
Carl Butler	87899	123.87
Looney Butler	87721	129.50
"C"		
C. E. Caldwell	87290	27.68
Calhoun City Motor Co	85259	727.96

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
Calhoun City Motor Co	85260	1,000.00
Calhoun City Motor Co	85261	4,500.00
J. L. Carpenter	87510	265.86
Ernest Carter	86746	300.00
W. C. Carter	82028	239.20
W. C. Carter	82029	2,000.00
W. C. Carter	82850	87.77
Chas. P. Chappell	86891	254.97
James Chappell	81433	105.68
James Chappell	87038	7.40
Chisholm Elec. & Plumb. Co	84433	268.58
Do	84435	301.18
Do	85581	74.15
Do	86115	93.50
A. W. Christian	86360	2.82
Gilbert W. Clark	79403	1,261.05
Noel Coggin	87513	21.99
R. T. Coggin	87514	52.15
Communities Development Co	86298	812.80
Do	86299	1,813.88
Do	86300	778.21
Do	87842	71.18
J. M. Conn	86661	85.58
Bill Cooley	78935	178.74
[fol. 304]		
Bill Cooley	78936	200.00
Do	78937	100.00
Do	87940	8.80
L. E. Cooper	87518	100.00
Do	87936	8.80
W. B. Cowan	85606	79.19
W. N. Cowden	85386	163.61
J. S. Crenshaw	87141	127.35
L. F. Cummings	87933	15.08
Geo. Cunningham	81451	44.99
Mrs. Geo. H. Cunningham	85415	680.69
Hal Cunningham	85957	54.67
Mrs. T. H. Curtis	85393	29.40
"D"		
C. H. Dabbs	87693	2,893.20
Do	87692	5,399.88
Mrs. H. R. Dabbs	86959	202.53
Dairy Farms Co	85287	2,523.92
Do	85295	106.34
R. D. Dalton	87723	57.50
C. R. Davis	80817	2,550.00
Do	84428	213.78
V. O. Davis	84794	148.00
B. E. Deaton	87724	5.73
J. W. Deavll	87524	120.16
Douglas & Rogers	84153	335.41
R. C. Douglas	86018	2,362.69
Do	86019	2,362.69
A. G. Duncan	87526	111.54
Mrs. D. C. Duncan	87525	32.34
"E"		
W. C. Edwards	87528	12.14
W. L. Elledge	83962	126.23
S. E. Enlow	87529	10.25
W. T. Estes	84708	25.93

List of Loans and Discounts Carried in Re-Opened Bank—Continued

"F"

Name	Number	Amount
J. E. Farrar	81535	158.08
Milton Fields	87434	165.80
Jean Ford	83410	3,832.90
J. W. Francis	78944	798.58
Do	78945	800.00
J. W. Francis	78946	900.00
Leonard Franklin	87531	36.07
L. F. Franklin	86670	237.53
Nolen Franks	87761	58.02
J. M. Fullerton	86743	191.90
Do	86744	418.75
Do	86745	418.75

"G"

J. A. Gann	87292	101.15
Daisy Garrett	86441	160.00
J. W. Gaulding	85315	175.00
D. G. Goggans	85948	63.90
J. A. Grant	80991	132.52
Do	87938	10.80
W. R. Gray	87535	81.36
Charlie Gregory	87133	134.71
J. R. G. Gregory	85537	144.40
E. B. Griffin	87536	13.06
Guarantee Mortgage	86565	266.82
Do	85279	1,600.00
Guaranty Mortgage & Sec. Co.	84766	482.81

[fol. 305]

Guaranty Mortgage & Sec. Co.	84766	25.47
Do	84767	440.73
Do	85265	9,525.50
Do	87264	264.00
Do	85268	549.00
Do	85961	102.56

"H"

L. T. Hadley	87134	99.03
J. W. Hallmark	86536	334.06
Do	87942	8.80
J. W. Hallmark Oil Co.	86541	29.07
Do	86542	50.00
Do	86543	230.84
Miss Mary Hansell	87537	281.20
Cortez Harris	82488	10.73
W. B. Harris	87953	4.90
W. S. Harris	87708	41.49
Harrisburg Dairy Co.	86394	125.00
Do	82322	207.50
Do	83234	1,808.11
Do	86413	32.03
Do	86393	66.22
Do	86448	33.11
Do	86491	33.11
Do	96573	33.10
Do	86723	33.10
Do	86804	33.10
Do	86883	33.10
Do	86932	23.10
Do	87061	23.78
R. T. Hathcote	87538	2.00

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
Jeff Henley	85831	488.73
S. J. High	86392	2,420.29
Do	85215	2,000.00
Do	85283	4,000.00
Do	85284	4,100.00
Do	85993	2,000.00
Do	86063	1,442.15
S. J. High & Co.	85055	3,633.03
Do	85056	9,551.02
Do	85057	9,551.02
Do	85058	9,551.02
Do	85059	86.19
Do	85060	2,387.75
Do	85061	3,581.63
Do	85062	3,581.63
Do	85063	3,581.63
Do	85064	4,297.96
Do	85065	4,775.51
Do	85054	4,775.51
Do	85223	55,771.00
Do	85463	1,810.79
Do	85317	3,250.85
Do	85319	1,721.02
Do	85320	1,147.35
J. M. Thomas	85401	2,868.67
Do	85402	2,868.67
Do	85403	1,000.00
[fol. 306]		
S. J. High & Company	85738	4,776.82
Do	85739	3,152.86
J. W. Hill & Co.	82526	1,489.39
W. S. Hill	87541	82.45
Calhoun Holcomb	85116	81.04
H. R. Holcomb	85685	226.00
H. R. Holcomb	87939	6.80
Holland Motor Company	86965	203.62
Do	87662	1.50
Do	86967	213.24
Lee Holloway	86726	58.69
J. T. Holley	87542	43.08
P. S. Holt	87697	146.50
Mrs. Sid Holt	86036	208.00
Home Realty Co., Inc.	85192	1,120.15
Do	85183	1,000.00
Do	86741	75.69
Do	86997	30.63
Do	87876	10.53
Raymond-Hood	87377	82.31
Do	87544	50.48
W. S. Hopkins	87466	80.65
D. B. Horton	86277	89.99
Mrs. C. K. Hudson	85451	16.27
Ed. Humphries	87545	23.76
Paul Hutchinson	83854	30.84
Do	83855	35.00
Do	83856	35.00
Do	83857	35.00
Do	83858	35.00
Do	83839	35.00
Do	83860	35.00
Do	83861	35.00
Do	83862	117.98

List of Loans and Discounts Carried in Re-Opened Bank—Continued

"I"

Name	Number	Amount
A. A. Inmon	81637	20.00
M. H. Irvin	86946	40.39
Ivey Poultry Farm	86992	70.00
"J"		
T. A. Jenkins	84409	16.83
Do	85608	2,682.69
Do	85609	4,943.34
Do	85610	4,801.76
Do	87675	77.00
Do	85674	5,572.70
Do	85675	4,370.67
Do	85676	248.77
Do	85574	953.24
Do	85810	50.00
Do	85811	50.00
Do	85812	50.00
Do	85812	50.00
Do	85814	50.00
Do	85815	510.15
Do	86056	101.00
Charlie Jobe	87149	164.69
W. M. Johnson	86756	92.80
Do	86757	86.40
Elmer Jolly	86626	104.82
[fol. 307]		
C. A. Jones	85708	65.00
Journal Review Pub. Co	87777	26.88
Do	87132	210.70
Gladys Keith	87548	23.94
J. B. Kennedy	82480	116.55
F. L. Kincannon	80043	58.95
Do	80045	300.00
Do	80044	300.00
Do	80046	300.00
Do	80047	300.00
Do	80048	300.00
Do	80049	14,206.97
Mrs. M. W. Kincannon	80050	2,249.64
Do	80051	1,809.07
Do	87772	76.72
Mrs. Sybil Kincannon	79344	13.75
Vann Kincannon, Jr.	86931	26.93
Mrs. Jimmie King	86535	42.94
W. W. Kingsley	87097	7.59
Winston Kirk	85672	13.87
Emmitt Knight	87549	131.67
W. C. Kyle	86767	2.77
Do	87712	28.42
W. M. Kyle	87691	30.47
"L"		
F. E. Lewellen	86846	15.00
J. M. Livingston	84388	5.37
Do	84389	3,300.00
Do	84390	2,839.52
Do	84391	3,400.00
L. C. Livingston	86680	105.77
C. B. Loden	87550	23.04
Sarah Long	84918	91.32
Sam H. & W. P. Long	87105	90.50

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
Sam P. Long	87715	44.80
C. A. Lowell	84149	47.85
W. A. Lower	87096	20.00
W. H. Lowery	85478	50.00
J. H. Luckett	87431	70.31
G. C. Lumpkin	83820	1,285.47
B. D. Lyle	86852	320.28
L. D. Lyle	81088	65.54
"Mc"		
S. A. McCarley	81372	8,547.82
Do	81915	400.00
W. A. McCarty	82293	52.50
Do	84319	31.00
Cecil McClear	82793	10.73
C. B. McCown	86684	68.64
Do	86685	816.51
Do	86686	84.51
E. C. McDaniel	87773	3.00
Do	87919	1.00
S. L. McDaniel	86687	200.00
Mrs. C. B. McGee	85193	40.60
G. W. McGuire	85907	500.00
Bevily McIntosh	86688	96.70
L. A. McMillan	86371	825.62
Mrs. Gertrude McMullen	86445	23.88
[fol. 308]		
C. C. McNeill	86512	3,089.33
Do	86513	1,747.93
W. B. McNutt	82047	2,900.00
"M"		
A. F. Maynard	79514	174.06
Do	87461	80.32
J. E. Maynard	80055	53.56
Olive Pattey Maynard	84610	161.54
C. D. Michael	87763	20.00
L. G. Milam	86095	1,273.93
Do	86096	2,862.75
P. S. Miller	87728	45.00
W. M. Minga	87554	20.00
J. L. Minor	86759	335.87
Normon Monaghan	84924	5,736.73
Shelby Monaghan	87557	75.34
W. A. Monaghan	86691	581.33
J. R. Monaghan	87045	.61
A. L. Moore	87273	65.25
G. E. Moore	87682	12.50
L. B. Moore	87640	5.00
R. Burr Moore	79907	285.74
J. B. Morgan	85901	93.21
George Morris	87367	5.00
Do	87436	4.38
Do	87656	5.00
Do	87678	8.00
Eber Morrow	87559	25.54
H. E. Morse	81115	150.00
T. S. Moss	87730	300.20
M. M. Mullins	87561	40.00

List of Loans and Discounts Carried in Re-Opened Bank—Continued

"N"

Name	Number	Amount
Mrs. N. E. Nash	87731	22.80
M. E. Nichols	87565	70.15

"O"

Richard Outlaw	85885	150.00

"P"

C. J. Paessler	84841	102.00
Do	85178	350.00
Do	85176	102.00
Do	85690	175.00
J. W. Page	81708	174.06
Marion Parker	83412	565.49
Do	83411	2,000.00
W. M. Parker	85819	3.87
G. W. Partlow	85828	337.54
Roy Partlow	85562	78.68
J. W. C. Parvin	87733	14.07
Dewey Patterson	86070	6.30
W. H. Patton	84664	983.86
Do	86489	1,046.69
M. C. Payne	81141	72.00
W. C. Payne	84341	118.55
Do	87948	12.48
Dr. R. H. Pegram	84323	85.52
Do	87950	4.90
C. J. Pennal	87569	34.17
Phil Perabo	85443	2,250.00
Do	85444	2,250.00
Do	85975	357.97
Robt. O. Perkins	85139	2,880.00
Do	85467	200.00
Do	85468	250.00

[fol. 309]

Robt. O. Perkins	85469	90.91
Do	86016	86.69
W. H. Powell (R)	87734	499.92
W. H. Powell (T)	84098	149.72
Do	85297	988.22
W. T. Prince	87735	5.00

"Q"

Thos. E. Quin	71377	2,000.00
Do	69408	1,930.00

"R"

Mrs. W. C. Raymond	85041	31.20
Do	85408	160.00
Do	86790	55.39
J. D. Rea	87571	39.52
Riley's Jewelry Store	83975	636.00
Ed. Riley	85924	2,483.54
H. D. Riley	81539	40.00
Do	81560	40.00
Do	81561	40.00
Do	81562	40.00
Do	81563	40.00
Do	81564	40.00

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
H. D. Riley	81565	40.00
Do	81566	40.00
Do	81567	40.00
Do	81568	40.00
Do	81569	40.00
Do	81570	40.00
Do	81571	40.00
Do	81572	40.00
Do	81573	40.00
Do	81574	40.00
Do	81575	40.00
Do	81576	40.00
Do	81577	40.00
Do	81578	40.00
Do	81579	40.00
Do	81580	40.00
Do	81581	40.00
Do	81582	40.00
Do	81583	40.00
Do	81584	40.00
Do	81585	40.00
Do	81586	40.00
Do	81587	40.00
Do	81588	40.00
Do	81589	40.00
S. C. Riley	87575	200.00
C. C. Rhinehart	87740	126.64
Cliff Robbins	86198	33.63
D. W. Robins	84167	953.39
Do	84301	2,385.75
Do	84302	2,385.75
Do	83303	2,385.75
Do	84304	2,385.75
Do	84305	2,385.75
Do	84306	2,385.75
Do	84701	1,191.19
D. W. Robins, et al	87224	2,691.06
D. W. Robins	87829	2,385.52
[fol. 310]		
T. W. Robinson	84574	64.40
H. E. Roebke	87738	1,440.41
C. M. Roebuck	87577	52.93
Miss Ida Rowan	78865	1,215.20
Do	86190	399.56
J. B. Rowan	85102	59.92
Dave Ruff	84059	49.85
Jack Ruff	81387	161.41
Do	87937	10.80
J. G. Ruff	87643	182.82
Do	87642	108.84
"S"		
Mrs. E. C. St. Clair	86091	129.99
Do	85767	104.00
Elihu Salters	86003	20.00
Jas. M. Savery	80433	315.80
Do	85328	19.38
Do	85329	50.00
Do	85330	50.00
Do	85331	50.00
Do	85332	50.00
Do	85333	1,050.00

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
T. W. Schoen	80638	700.00
Do	83691	198.92
W. D. Shumpert	87580	10.19
J. T. Senter	80725	232.39
Mrs. H. W. Shackelford	87582	10.00
Annie Shearer	61961	46.36
Do	61962	50.00
Do	61963	50.00
Do	61964	50.00
Do	61965	50.00
Do	61966	50.00
Do	61967	50.00
Do	61968	50.00
Do	61969	50.00
Do	61970	50.00
Do	61971	50.00
Do	61972	50.00
Do	61973	50.00
Do	61974	50.00
Do	61975	50.00
Do	61976	50.00
Do	61977	50.00
Do	61978	50.00
Do	61979	50.00
Do	61980	50.00
Do	61981	50.00
Do	61982	50.00
Do	61983	50.00
Do	61984	50.00
Do	61985	50.00
Do	61986	50.00
Do	61987	50.00
Do	61988	50.00
Do	61989	50.00
Do	61990	50.00
Do	61991	50.00
Do	61992	50.00
Do	61993	50.00
[fol. 311]		
Annie Shearer	61994	50.00
Do	61995	50.00
Do	61996	50.00
Do	61997	50.00
Do	61998	50.00
Do	61999	50.00
Do	62000	50.00
Do	62001	50.00
Do	62002	50.00
Do	62003	50.00
Do	62004	50.00
Do	62005	50.00
Do	62006	50.00
Do	62007	50.00
Do	62008	50.00
Do	62009	50.00
Do	62010	50.00
Do	62011	50.00
Do	62012	50.00
Do	62013	50.00
C. D. Sheffield	86367	243.27
A. L. Shumpert	78941	175.00

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
A. L. Shumpert	78942	200.00
Do	78943	200.00
A. T. Siddall	87331	92.47
A. D. Simpson	86559	4,307.56
V. E. Simpson	86758	350.00
A. M. Sims	81080	399.51
Edd Sisk	87584	88.73
Do	87831	3.50
W. R. Sisk	87585	61.73
L. A. Sloan	79713	440.00
Do	80551	515.75
P. E. Smith	54236	416.45
Do	54237	500.00
Do	54238	500.00
Do	54239	500.00
Do	54240	500.00
Do	54241	500.00
Do	54242	500.00
Do	54243	500.00
Do	54244	483.70
Turner Smith	87586	51.54
D. N. Spradling	81196	248.02
Lish Springer	87588	18.88
W. I. Springer	80595	540.00
G. P. Stamper	87589	62.21
Ed Stith	80523	587.90
S. P. Stone	83289	75.00
Do	83290	75.00
Do	83291	75.00
Do	83294	1,571.12
Do	85465	1,600.00
W. G. Suggs	86751	76.29
Do	86752	81.89
Do	86753	87.49
Do	86754	93.09
B. L. Summers	87211	16.30
Do	87269	20.00
[fol. 312]		
B. L. Summers	87370	20.00
Do	87427	20.00
Do	87654	20.00
Charlie Summers	85681	73.52
Swamp Dredge Corp	86071	2,279.77
Do	86072	2,279.77
Do	86073	2,279.77
Do	86074	4,559.52
Do	86075	4,559.09
Do	86076	5,849.82
"T"		
E. H. Tackett	86408	61.07
Do	87830	3.00
W. M. Taylor	87592	15.65
Dweey Thomas	87371	8.90
Do	87428	10.00
Do	87649	10.00
Jimmie Thomas	87476	149.28
Do	87213	.70
Do	87281	5.00
Do	87372	5.00
Do	87416	5.00
Do	87621	5.00
Do	87747	1.65

List of Loans and Discounts Carried in Re-Opened Bank—Continued

Name	Number	Amount
J. M. Thomas	85212	4,792.24
P. K. Thomas	84207	1,747.38
Do	84717	375.39
Lee Thompson	82087	765.41
L. O. Thompson	86561	54.00
O. T. Trapp	80138	952.21
Do	80139	3,188.73
Do	80140	3,744.89
Do	86928	7.50
Do	84583	387.82
N. F. Troy	82652	53.70
Do	82653	54.00
Do	82654	3,850.87
E. L. Turner	86851	290.57
"W"		
J. R. Walker	85909	20.00
J. A. Watson	81047	258.36
T. C. Watson	87039	96.82
Wayne Cotton Mill Yarn A/C	84045	915.55
R. A. Weaver	83019	698.64
Do	83020	1,525.15
Robt. A. Weaver	85200	500.00
Do	86378	384.71
A. R. Webb	86625	81.07
Georgia West	87598	26.58
W. C. West	87600	143.55
A. R. Whitlock	87601	43.19
T. Wilburn	80612	825.54
T. E. Wilburn	80611	10.95
Do	82364	329.86
J. C. Williams Lumber Co	85048	375.00
Odie Williams	87392	5.95
Robert E. Williams	85710	25.96
J. P. Willis	87293	478.64
M. Winchester	86718	108.55
J. R. Witt	87605	31.33
[fol. 313]		
J. K. Worthy	87610	66.60
Do	87611	9.91
R. G. Wright	85602	605.18
"Y"		
D. P. Young	87612	6.755
E. A. Young	87613	31.62
J. T. Young	82456	39.29
Do	83498	25.41
W. O. Young	79829	190.75
Total Notes Pooled		$484,194.71
Equity in Notes Held in Re-opened Bank		$275,016.37
		$759,111.08

[fol. 314]

Live Stock Account Carried in Pooled Assets

Description	Amount
Two Mares, twenty-one Mules, two Cows, one Bull Calf, registered all carried in live stock account at	$1,080.90

Automobile Account Carried in Pooled Assets

Description	Amount
Ford Two-Door Sedan, 1929 Model, Motor No. A-1,155,351. Chevrolet Four-Door Sedan, 1926 Model, Motor No. 2,828,531. Chevrolet Two-Door Coach, 1928 Model, Motor No. 4,800,789. Ford Touring Car, 1929 Model, Motor No. A-1,307,127. The above cars are carried in automobile account at	$987.50

List of Property Carried in Tax Title Account Included in Pooled Assets

Name of property	Description	Bought in for 1930 tax	Bought in for 1931 tax
E. J. Ford Land	72½ acres Mid. Pt., S½ SE¼ 23-7-5	$63.49	
E. C. Hinds Lot	E½ Lot 5, Blk. 45, NE¼, 31-9-6	167.25	$127.90
Kizer Bldg.	Store, Lots 13 & 14, Blk. 4, SE¼, 31-9-6	332.25	
Professional Bldg. Lot	W½ Blk. 35, NE¼, 31-9-6	101.35	
D. N. Brown	60 acres S side NW¼, 22-11-7		14.49
D. N. Brown	60 acres N side SW¼, 22-11-7		17.37
C. R. Davis	4 acres SE corner NE¼, 1-8-5		41.97
C. R. Davis	20 acres E end NE¼ SE¼, 1-8-5		31.76
C. R. Davis	47 acres S side NW¼, 6-8-6		45.38
C. R. Davis	W end N½ SW¼, 6-8-6		45.38
C. R. Davis	W end N½ SW¼, 6-8-6		49.38
Ned Wiley	Res. Lot, Pt. NW¼, 21-8-6		44.03
E. R. Chisholm	30 acres E. end S½ NW¼, 9-10-6		41.25
Lee O. Thompson	Res., Lot 11 & 12, Blk. 6, NW¼, 31-9-6		41.25
	Stable Lot, 32½ feet W½ Lot 15, Blk. 46, NW¼, 31-9-6		
		$666.34	$454.78
Property bought in at 1931 tax sale		454.78	
		$1,121.12	

[fol. 315]

Cash Items carried in Pooled Assets

Date of check	Bank drawn on	Endorsed by	Amount
12-24-30...	Bank of Kilmichael.....	Mabel Trainer.....	20.00
12-24-30...	Bank of Pontotoc.....	E. G. Brandon.....	6.00
12-24-30...	Bank of Saltillo.....	Ermon Smith.....	2.00
12-21-30...	Bank of Saltillo.....	Thomas Lyles.....	4.30
12-22-30...	Bank of Saltillo.....	J. F. Elliott.....	3.78 Bal.
	Bank of Derma.....	Drawn by Bank of Derma	61.54
	Booneville Banking Company.....	J. E. Cummings.....	3.50
	Booneville Banking Company.....	Drawn by Gip Winfield.	38.69
	1st National Bank, Mobile.....	Corinth Bk. & Tr. Co...	65.74 Bal.
	Mer. Bk. & Tr. Co., Jackson.....	Drawn by Corinth Bk. & Tr. Co.....	116.25 Bal.
	Corinth State Bank.....	J. W. Lowery.....	3.78 Bal.
	Corinth State Bank.....	J. W. Lowery.....	45.37 Bal.
	Corinth Bk. & Tr. Co...	G. W. Lang.....	3.99 Bal.
1-23-33...	Fulton Bank.....	Drawn by E. O. Reeves.	10.00
			$384.94

[fol. 316]

Bond Account

Bond Account, see Schedule No. 2 in Pooled Assets for Detailed List.....	$79,599.15
After giving effect to Capital Structure.....	2,011.00
Less Amount Transferred to Re-opened Bank.....	50,000.00
Equity in Bonds carried in Re-opened Bank	$31,610.15

Schedule #2

List of Bonds Held by Peoples Bank & Trust Company, Tupelo, Mississippi, in Which an Equity is Held for Pooled Assets.

Name	No.	Series	Rate	Maturity Date		Amount
Winston County, Miss., Road District #2 Bonds	29		5½%	11- 1-39		$1,000.00
Do	30		5½%	11- 1-39		1,000.00
Do	31		5½%	11- 1-39		500.00
Do	32		5½%	11- 1-40		1,000.00
Do	33		5½%	11- 1-40		1,000.00
Do	34		5½%	11- 1-40		500.00
Town of Wayneeboro, Miss., Waterworks & Sewerage Bonds	56		5½%	5- 1-47		1,000.00
Do	57		5½%	5- 1-47		1,000.00
Do	58		5½%	5- 1-47		1,000.00
Do	59		5½%	5- 1-48		1,000.00
Do	60		5½%	5- 1-48		1,000.00
Saltillo Separate School Dist. Lee County, Miss., Bonds	27		6%	6- 1-36		100.00
Lower Town Creek Drainage District #3, Agricultural & Sanitary Improvement, Lee County, Miss., Bonds	8	"P"	5½%	4- 2-33	Bal.	50.00
Lower Town Creek Drainage District #3, Agricultural & Sanitary Improvement, Lee County, Miss., Bonds	9	"P"	5½%	4- 2-33		100.00
Oldham Road District of Tishomingo County, Miss.	6		6%	2- 1-37		500.00
Meridian Creek Drainage District Calhoun County, Miss., Refunding Bonds	4		6%	6-15-35		500.00
Do	5		6%	6-15-36		500.00
Do	6		6%	6-15-37		500.00
Do	7		6%	6-15-38		500.00
Do	8		6%	6-15-39		500.00
Do	22		6%	6-15-40		500.00
Do	23		6%	6-15-50		500.00
Do	24		6%	6-15-50		500.00
Do	25		6%	6-15-51		500.00
Do	26		6%	6-15-51		500.00
Do	27		6%	6-15-52		500.00
Do	28		6%	6-15-52		500.00
Do	29		6%	6-15-53		500.00
Do	30		6%	6-15-53		500.00
Do	31		6%	6-15-54		500.00
Do	32		6%	6-15-54		500.00
Do	33		6%	6-15-54		500.00

Schedule #2—Continued

Name	No.	Series	Rate	Maturity Date		Amount
McNairy County, Tenn., Drainage District #4, Drainage Bonds	28		6%	7- 1-31		500.00
Do	29		6%	7- 1-32		500.00
Do	30		6%	7- 1-32		500.00
Do	31		6%	7- 1-32		500.00
Do	32		6%	7- 1-33		500.00
Do	33		6%	7- 1-33		500.00
[fol. 318]						
Sabougla Drainage District No. 2, Calhoun and Webster Counties, Miss., Bonds	24		6%	5- 1-32	Bal.	115.15
Do	25		6%	5- 1-32		1,000.00
Do	27		6%	5- 1-33		1,000.00
Do	28		6%	5- 1-33		1,000.00
Do	29		6%	5- 1-33		1,000.00
Do	30		6%	5- 1-33		1,000.00
Do	32		6%	5- 1-34		1,000.00
Do	33		6%	5- 1-34		1,000.00
Do	34		6%	5- 1-34		1,000.00
Do	35		6%	5- 1-35		1,000.00
Do	36		6%	5- 1-35		1,000.00
Do	37		6%	5- 1-35		1,000.00
Do	38		6%	5- 1-35		1,000.00
Do	39		6%	5- 1-36		1,000.00
Do	40		6%	5- 1-36		1,000.00
Do	41		6%	5- 1-36		1,000.00
Do	42		6%	5- 1-36		1,000.00
Do	43		6%	5- 1-37		1,000.00
Do	44		6%	5- 1-37		1,000.00
Do	45		6%	5- 1-37		1,000.00
Do	46		6%	4- 1-37		1,000.00
Do	47		6%	5- 1-38		1,000.00
Friendship and Pleasant Site Consolidated School Dist., Itawamba County, Miss., Bonds	11		6%	8- 1-37		700.60
Snake Creek Drainage Dist., No. 5, in McNairy County, Tenn., and No. 4, in Hardin County, Tenn.	2	"O"	6%	5- 1-31	Bal.	134.00
Do	1	"P"	6%	5- 1-32		500.00
Do	2	"P"	6%	5- 1-32		500.00
Do	3	"P"	6%	5- 1-32		100.00

	Do	4	"P"	6%	5- 1-32	100.00
	Do	1	"Q"	6%	5- 1-33	500.00
	Do	2	"Q"	6%	5- 1-33	500.00
	Do	3	"Q"	6%	5- 1-33	500.00
	Do	1	"R"	6%	5- 1-34	500.00
	Do	2	"R"	6%	5- 1-34	500.00
	Do	3	"R"	6%	5- 1-34	500.00
	Do	1	"S"	6%	5- 1-35	500.00
	Do	2	"S"	6%	5- 1-35	500.00
	Do	3	"S"	6%	5- 1-35	500.00
	Do	1	"T"	6%	5- 1-36	500.00
	Do	2	"T"	6%	5- 1-36	500.00
	Do	3	"T"	6%	5- 1-36	500.00
	Do	4	"T"	6%	5- 1-36	500.00
Loosacoona River Drainage District #2, Calhoun County, Miss., Refunding Bonds.	Do	5		6%	5- 1-33	500.00
[fol. 319]	Do	6		6%	5- 1-33	500.00
Loosacoona River Drainage District #2, Calhoun County, Miss., Refunding Bonds.	Do	7		6%	5- 1-34	500.00
	Do	8		6%	5- 1-34	500.00
	Do	9		6%	5- 1-34	500.00
	Do	10		6%	5- 1-34	500.00
	Do	11		6%	5- 1-34	500.00
	Do	12		6%	5- 1-35	500.00
	Do	13		6%	5- 1-35	500.00
	Do	14		6%	5- 1-35	500.00
	Do	15		6%	5- 1-36	500.00
	Do	42		6%	5- 1-40	500.00
	Do	43		6%	5- 1-40	500.00
	Do	44		6%	5- 1-40	500.00
	Do	47		6%	5- 1-41	500.00
	Do	48		6%	5- 1-41	500.00
	Do	54		6%	5- 1-42	500.00
	Do	55		6%	5- 1-42	500.00
	Do	56		6%	5- 1-42	500.00
	Do	57		6%	5- 1-42	500.00
	Do	58		6%	5- 1-42	500.00
	Do	59		6%	5- 1-42	500.00
	Do	60		6%	5- 1-42	500.00
	Do	61		6%	5- 1-43	500.00
	Do	62		6%	5- 1-43	500.00
	Do	63		6%	5- 1-43	500.00

Schedule #2—Continued

Name	No.	Series	Rate	Maturity Date	Amount
Chiwappa Town Creek Drainage District #4, Lee and Monroe Counties, Miss., Drainage Bonds	11	"R"	6%	5- 1-39	500.00
Do	12	"R"	6%	5- 1-39	500.00
Do	12	"S"	6%	5- 1-40	500.00
Do	13	"S"	6%	5- 1-40	500.00
Do	14	"T"	6%	5- 1-41	500.00
Do	15	"T"	6%	5- 1-41	500.00
Tupelo Hotel Company 6% First Mortgage Gold Bonds	72	"H"	6%	10- 1-33	100.00
Dunivan Creek Drainage District, Itawamba County, Miss., Drainage Bonds	34			5- 2-34	100.00
					$69,599.15
Bonds Up with S. P. Clayton, Referee in Bankruptcy					
Lower Town Creek Drainage District #3			5½%		1,500.00
Loosacoona River Drainage District #2			6%		8,500.00
Total Bonds					$79,599.15
Less Amount Transferred to Re-opened Bank					47,989.00
Equity in Bonds Held by Re-opened Bank					$31,610.15

[fol. 320]

List of Overdrafts Carried in Re-opened Bank

Name	Amount
Birmingham Consolidated School Interest Fund	241.64
Cedar Hill Consolidated School Interest Fund	49.04
Cedar Hill Consolidated School Sinking Fund	109.47
Fourth District Good Roads Interest Fund	1,287.50
Fifth District Good Roads Interest Fund	1,181.25
Lee County Highway Interest Fund	139.25
Oak Grove School Fund	25.01
Palmetto Consolidated School Interest Fund	34.17
Palmetto School Sinking Fund	15.26
Pontocola School Interest Fund	6.78
Pontocola School Sinking Fund	182.36
Second District Good Roads Interest Fund	601.50
Shiloh Consolidated School Interest Fund	228.71
	$4,101.94

[fol. 321]

Schedule #4

List of Stock Held by Re-opened Bank in Which There Is an Equity Due Pooled Assets

No. shares		Par value	Carried at
11	Citizens State Bank	$1,100.00	$1,100.00
1754	Independent Oil Co. Common, Par .50¢	877.00	801.60
500	Independent Oil Co., Preferred, Par $1.00	800.00	500.00
134	Journal-Review Pub. Co.	13,400.00	1,608.00
95	King Grocery Co	9,500.00	5,780.00
10	McLeran Ice Cream Co	1,000.00	1,000.00
137	Merchants Compress Co	13,700.00	9,350.00
3	Miller Ins. Agency	300.00	300.00
1	Nettleton Fox Hunting and Fishing Club	10.00	80.00
20	Reed Bros. Inc	2,000.00	2,000.00
8	Savery's Ins. Agency	800.00	50.00
497½	Tupelo Cotton Mills Common	49,750.00	13,055.00
261	Tupelo Cotton Mills New Preferred	5,220.00	
2	S. B. H. Do Preferred	200.00	1,770.00
74	Tupelo Garment Co	74.00	74.00
	Total held by bank		$37,468.60
	Transferred to reopened bank		7,500.00
	Equity in stocks held by reopened bank		$29,968.60

[fol. 322]

Furniture and Fixtures of Re-opened Bank in Which There Is Equity in Pooled Assets

All furniture and fixtures of the Peoples Bank & Trust Company, Tupelo; Peoples Bank & Trust Company, Nettleton; Peoples Bank & Trust Company, Rienzi, carried at a total amount before reopening as	$20,000.00
Carried into reopened bank	5,000.00
Equity in furniture and fixtures carried in Pooled assets	$15,000.00

[fol. 323]

Real Estate—See Attached Schedule

Real estate Account—See Schedule No. 5 in pooled assets for detailed list	$372,623.86
After giving effect to capital structure in full	3,100.00
	$375,723.86
Less amount transferred to reopened bank	68,917.50
Equity in real estate carried in reopened bank	$306,806.36

[fol. 324]

Schedule #5

List of Real Estate Held by Re-opened Bank in Which There Is an Equity Due Pooled Assets

Tract No.	Name of property	Memo.	Amount
1	Same Moore (Jenkins) 10-3-21	45 acres west of Tupelo	$764.68
2	Clarkedale Cabins (12-27-21)	11 negro cabins	5,000.00
3	Piftman & Greer (7-14-23)	1087 acres of land in Claiborne County	5,000.00
4	W. X. Wilson (1-18-24)	400 acres land Pontotoc County	2,402.21
5	J. A. Simmons (4-9-1924), (Harkreader Place)	95 acres land west of Verona	4,294.45
6	J. E. Motlow (3-5-1925)	45 acres land west of Tupelo	400.00
7	A. C. Hamrick (12-31-1925)	10 acres north of Tupelo	1,250.00
8	Lot No. 1 Blk. D. (7-8-1929)	Jenkins Subdivision	75.00
9	Richardson Place (12-2-1926)	159 acres of land east of Shannon	15,460.00
10	J. T. Borden House (1-29-29)	Residence on north side Magazine St	6,000.00
11	A. C. Hambrick (2-7-27)	120 acres land in Madison County, Ala	8,596.69
12	C. D. Sheffield (12-31-38), Plunkett Place	80 acres land in Itawamba County	300.00
13	C. D. Sheffield (12-31-28), S. of C. D. S	69 acres land in Itawamba County	1,500.00
14	C. D. Sheffield (12-31-28), Summers Place	80 acres in Itawamba County	3,200.00
15	C. D. Sheffield (12-31-28), Files Place	321 acres land in Itawamba County	4,000.00
16	C. D. Sheffield (12-31-28), Bottom W. of Files Place	114 acres land in Itawamba County	4,600.00
17	W. A. Blair (2-14-29)	Piggly-Wiggly Store W. side S. Spring	12,000.00
18	Malone & Thomas (10-14-29)	3 negro double apartments	2,016.70
19	R. F. Manuel (12-20-29)	30 acres land in Monroe County	100.00
[fol. 325]			
20	S. P. Stone, Tenant Dwelling (4-24-30)	S. W. Corner of Gloster & Jackson Streets	$1,250.00
21	S. P. Stone (4-24-30)	2 lots on W. Jackson Street	750.00
22	S. P. Stone (4-24-30)	15 acres land on W. side N. Gloster St	1,100.00
23	S. P. Stone (4-24-1930)	200 acres land north of Mooreville	2,000.00
24	Frank Bryan (8-30-1930)	60 acres land near Nettleton, Lee County	3,000.00
25	Roy Smith (9-3-30)	36 acres of land in Prentiss County	300.00
26	J. Q. Robins, Jr. (11-30-30)	520 acres land near Shannon, First Mortgage to Federal Land Bank	15,811.30
27	H. E. Sheffield (12-16-1930)	83 acres land near Mantachie, Itawamba Co	3,500.00
28	C. D. Sheffield, Franks place (12-29-30)	205 acres land in Itawamba County	12,000.00
29	C. D. Sheffield Franks Place (12-29-30)	25 acres land in Itawamba County	500.00
30	C. D. Sheffield, Pearce Place (12-29-30)	587 acres land in Itawamba County, 1st Mtg. to F. L. Bk	11,491.83

31	Harrisburg Dairy Co. (1-29-31)	Dairy House and lot W. of Tupelo	2,500.00
32	W. H. Powell (2-7-31)	House and lot on N. side of Bankhead Highway	2,413.85
33	Mrs. A. B. High (6-6-31)	Home place on S. W. Cor. Madison and Jefferson Streets	35,001.00
34	Mrs. A. B. High	¼ interest in Allen & Robins Farm	18,038.13
35	J. L. Minor (6-10-31)	1668 acres land in Calhoun County and Lot in Calhoun City	14,156.28

[fol. 326]

36	H. B. Heard (8-31-31)	369½ acres land in Lee County, 1st Mtg. to F. L. Bank	$6,949.50
37	H. B. Heard (8-31-31)	52 acres land in Lee County, S. E. of Belden	2,500.00
38	Itawamba County Bank Bldg. (8-31-31)	Bank Bldg. in Fulton Itawamba Co.	8,155.94
39	Guarantee Mt. Co. (9-8-31)	Kizer Bldg. on W. side South Spring St., 1st Mtg. to Mrs. T. B. Featherstone	15,600.00
40	Guarantee Mortgage Co. (9-8-31)	Miss. Stores Bldg. on N. side of Main St., Mtg. to J. J. Paulk and Mrs. O. B. Rogers	5,000.00
41	Jno. F. Sanders (9-8-1931)	House and Lot on Royal Boulevard	1,546.34
42	Dairy Farms Co. (5-29-31)	640 acres land in Chickasaw Co.	11,500.00
43	Dairy Farms Co. Wilson Place (1-28-1931)	447.59 acres land in Lee County	16,050.00
44	J. I. Berryhill	House and 80 acres land in Lee Co.	600.00
45	Guarantee Mortgage Co. (11-18-1931)	A. S. Birmingham house in Okolona, Mississippi	2,163.33
46	Mrs. M. W. Kincannon (11-16-1931)	Bldg. occupied by Journal Review Pub. Co.	1,350.11
47	F. L. Kincannon (11-16-31)	Old Journal Bldg. on S. W. Cor. Spring and Magazine Streets	3,333.67
48	W. C. Carter (7-8-32)	147½ acres land S. W. of Verona, Lee Co., Miss.	300.00
49	J. I. Berryhill (S. D. Oaser Place), (12-19-1931)	40 acres land S. E. of Saltillo	50.00
50	D. W. Robins (12-23-21)	400 acres land in Lee Co.	4,000.00

[fol. 327]

51	Looney Butley	95 acres land in Prentiss Co.	160.00
52	R. Burr Moore (1-3-32), Boykin Place	House and Lot on Royal Blvd.	800.00
53	S. P. Stone (3-12-32)	Res Lots (6) on Madison St.	1,500.00
54	J. L. Carpenter (5-9-1932)	80 acres land in Itawamba County	200.00
55	E. J. (Jean) Ford (4-21-1932)	75 acres land west of Guntown	500.00
56	Gertrude Bumpass (5-25-1931)	Lots in Aberdeen, Miss., Monroe County	1.00
57	J. W. DeVall (6-1-1932)	80 acres land in Itawamba County	100.00
58	Jim Phelps Co. (7-23-1932)	Double negro tenement	725.95
59	Miss Ida Rowan (8-6-1932)	Dwelling and Lot on Jackson St.	1,000.00
60	C. C. McNeill (8-29-33)	476 acres land N. of Tupelo, 1st Mtg. to F. L. Bk.	2,100.00
61	R. C. Westmoreland (10-8-1932)	60 acres S. E. of Saltillo	200.00
62	Gilbert W. Clark (10-30-1932)	8 acres No. of Verona	750.00

Schedule #5

List of Real Estate Held by Re-opened Bank in Which There Is an Equity Due Pooled Assets—Continued

Tract No.	Name of property	Memo.	Amount
63	Rogers Real Estate (11-1-1932)	Merchants Compress Co. Lot	2,000.00
64	Rogers Real Estate	Store Bldg. on Main St.	15,000.00
65	Rogers Real Estate	Cotton Warehouse on Spring St.	27,000.00
66	Rogers Real Estate	Warehouse on Front St.	12,500.00
67	Rogers Real Estate	Store Bldg. at Amory Monroe County, Miss.	5,000.00
68	J. J. Rogers et al. (11-12-1932)	Perry & Baker Store Bldg.	6,648.32
69	J. J. Rogers & Son	6 lots in Memphis, Tenn.	500.00
[fol. 328]			
70	R. D. Dalton (11-18-32)	House and Lot Rienzi, Miss.	7.50
71	W. B. McNutt ¼ Int.	144 acres land in Union County, Miss., McNutt & Strain Land	500.00
72	L. A. Sloan (12-2-32)	160 acres land in Itawamba County, Miss.	160.00
73	A. L. Coggins (12-9-32)	Store Bldg. and Lots in Baldwyn, Miss.	750.00
74	J. H. Watts (12-17-1932)	40 acres land in Lee County, Miss.	150.00
75	H. Agnew (2-33-33)	House and Lot in Guntown, Miss.	300.00
76	H. Agnew (4-31-32)	32½ acres land in Lee County	300.00
77	Communities Development Co. (12-23-33)	5 lots in Highland Circle, Tupelo, Miss.	1,050.00
78	Annie Shearer	House and Lot in Starkville, Oktibbeha County, Mississippi	1,000.00
79	J. M. Livingston (2-25-1933)	Gin House and Fixtures and Machinery, Tupelo	3,000.00
80	Mrs. M. W. Kincannon (2-25-1933)	House and Lot on Church St., Tupelo, Miss.	3,010.00
81	J. M. Brown	Store Bldg. in Fulton Itawamba County, Miss.	750.00
82	L. A. Sloan (2-19-83)	60 acres land in Itawamba County, Miss.	100.00
83	P. E. Smith (4-15-33)	520 acres land in Lee County, 1st Mtg. to F. L. Bank	100.00
84	C. R. Davis (4-22-33)	House and Lot in Saltillo, Lee Co., Miss.	490.00
85	C. R. Davis (4-22-1933)	181 acres land in Lee County, 1st Mtg. to F. L. Bk.	10.00
86	Old Firt. Natl. Bk.	Store Bldg. on N. E. Cor. Main and Spring Sts.	12,500.00
[fol. 329]			$375,673.86
Less amount carried into Re-opened Bank			68,867.50
Equity in Real Estate carried in Re-opened Bank for Pooled Assets			$306,806.36

[fol. 330] Overdrafts

In answer to this, these overdrafts were created prior to the closing of Peoples Bank & Trust Company for liquidation. These overdrafts represent overdrafts on coupon accounts; for example, the first overdraft is an overdraft of Birmingham Consolidated School District for $241.64; this just means that the Birmingham Consolidated School District Interest Fund Account is overdrawn that amount on the books of Peoples Bank & Trust Company, in Liquidation; and was overdrawn that amount when the bank closed, which overdraft was on account of the fact that there were not sufficient funds to this account to pay matured coupons as they were presented.

[fol. 331] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 332] In Supreme Court of the United States

Statement of Points to be Relied Upon by Appellants and Designation of Parts of Record Necessary for the Consideration Thereof—Filed Dec. 19, 1934

Come now the said appellants, by attorney, and presents the following statement of points under Paragraph 9 of Rule 13 of this Court upon which they intend to rely in prosecuting the appeal in above styled cause together with those parts of the record they deem necessary for the consideration thereof, as follows:

I

That Chapter 251 of the Laws of the State of Mississippi 1932, as construed by the Supreme Court of the State of Mississippi rendered in said cause is obnoxious and repugnant to and in violation of paragraph 1 of Section 10 of the Constitution of the United States; in that, the construction placed upon said Chapter 251 of the Laws of the State of Mississippi 1932, the decree entered in said cause by the Chancery Court of Lee County, Mississippi and the judgment of the Supreme Court of the State of Mississippi affirming said decree impairs the obligation of the contracts

theretofore existing between appellants and Peoples Bank & Trust Company, Tupelo, Mississippi, a banking corpora- [fol. 333] tion organized and existing as such under and by virtue of the laws of the State of Mississippi.

The attention of the Court is directed to the following parts of the record which appellants deem necessary for the consideration of above question:

(a) Petition, and exhibits thereto filed in the Chancery Court of Lee County, Mississippi by appellees.

(b) Objections filed by appellants.

(c) Decree entered by the Chancery Court of Lee County, Mississippi in said cause.

(d) Assignments of error on appeal to Supreme Court of Mississippi.

(e) Judgment of the Supreme Court of State of Mississippi affirming same, including the majority and dissenting opinions of said Court.

(f) Chapter 251 of the Laws of the State of Mississippi 1932.

(g) Chapter 85 of the Code of the State of Mississippi 1930 and Chapter 82 of Hemmingway's Code of the State of Mississippi 1917, and especially Sections 2815 of Chapter 85 of the Code of State of Mississippi 1930, and Section 3619 of Hemmingway's Code of the State of Mississippi, 1917.

(h) Petition for appeal to this Court order granting appeal, citation, assignments of error and statement as to jurisdiction, on appeal to this Court.

II

That Chapter 251 of the Laws of the State of Mississippi 1932, the decree entered in said cause by the Chancery Court of Lee County, Mississippi and the judgment of the [fol. 334] Supreme Court of State of Mississippi affirming said decree deprives these appellants of their property without due process of law; and, denies these appellants the equal protection of the laws in violation of paragraph I of the Fourteenth Amendment to the Constitution of the United States.

The attention of the Court is directed to the following parts of the record which appellants deem necessary for the consideration of above question:

(a) Petition, and exhibits thereto filed in the Chancery Court of Lee County, Mississippi, by appellees.

(b) Publication of notice of hearing for service of process as shown by the record, including order of Chancery Court of Lee County, Mississippi, for such process; summons issued in cause as shown by the record.

(c) Objections filed by appellants.

(d) Decree of Chancery Court of Lee County, Mississippi, in said cause.

(e) Judgment of Supreme Court of the State of Mississippi affirming said decree.

(f) Assignment of errors on appeal to Supreme Court of Mississippi.

(g) Opinion of Supreme Court of State of Mississippi affirming decree, including dissenting opinion as reported in the case of Dunn, et al. vs. Love, et al. 155 So. 351.

(h) Chapter 251 of the Laws of State of Mississippi, 1932.

(i) Chapter 85 of the Code of the State of Mississippi, 1930.

(j) Chapter 82 of Hemmingway Code of Mississippi, 1917.

(k) Section 3815 of the Code of State of Mississippi, 1930.

(l) Section 3619 of Hemmingway's Code of the State of [fol. 335] Mississippi, 1917.

(m) Petition for appeal to this Court, including assignments of error, order granting appeal, citation and jurisdictional statement.

Respectfully submitted, E. C. Sharp, Geo. T. & Chas. S. Mitchell, by Chas. S. Mitchell, Attorneys for Appellants.

I, Chas. S. Mitchell, do hereby certify that I have this day handed in person to C. R. Bolton, one of the attorneys for appellees a true and correct copy of the above and foregoing statement of points upon which appellants will rely in prosecuting its appeal of above styled cause to the Supreme Court of the United States and that I have also mailed to Messrs. Creekmore & Creekmore, attorneys for appellees, Jackson, Mississippi, a true and correct copy of same and have also mailed postage prepaid to Messrs. Flowers, Brown and Hester, Jackson, Mississippi, attorneys

for appellees, a true and correct copy of the above and foregoing statement.

Witness my signature on this the 14th day of December, 1934.

Chas. S. Mitchell, Attorney for Appellants.

[fol. 336] [File endorsement omitted]

[fol. 337] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION BY APPELLEE OF THE ADDITIONAL PARTS OF THE RECORD WHICH HE THINKS MATERIAL—Filed Dec. 24, 1934

Appellee submits, in compliance with Section 9 of Rule 13, Revised Rules of the Supreme Court of the United States, the following parts of the record in this cause, in addition to the parts designated by the appellants, and which he deems material to a proper consideration of this case, to-wit:

1. Petition of Depositors' Committee to re-open bank (Transcript, pp. 52-55, inclusive);

2. Decree of court directing the issuance of process and publication of notice. (Transcript, pp. 33-34, inclusive);

3. Proof of publication of notice to creditors and other parties in interest. (Transcript, pp. 35-36, inclusive);

4. Supplement to the petition for the re-opening of the bank (Transcript, pp. 294-337, inclusive, and pp. 95-101, inclusive). The foregoing constitutes the supplement to the petition filed in the lower court for the re-opening of the bank, but was disarranged by the Clerk of the Supreme Court of Mississippi in making the transcript, as is shown by the page record numbers in that court.

5. Appearance and Agreement (Transcript, pp. 102-103, inclusive);

6. Testimony of Witness V. S. Whiteside (Transcript pp. 117-145, inclusive), and pp. 155-165, inclusive. Testimony of Witness A. C. Powell (Transcript, pp. 165-169, inclusive);

[fols. 338-341] 7. Opinion of Chancery Court of Lee County (Transcript, p. 174).

The above portions of the record are deemed material to a proper consideration of the case, in addition to the parts thereof pointed out by appellants.

C. R. Bolton, Creekmore & Creekmore, Flowers, Brown & Hester, Attorneys for Appellee.

I do hereby certify that I have this day mailed to Hon. E. C. Sharp, Booneville, Mississippi, and to Messrs. George T. and Charles S. Mitchell, Tupelo, Mississippi, attorneys of record for appellants, a true and exact copy of the above and foregoing, being the additional parts of the record deemed by appellee to be material.

This December 21, 1934.

H. H. Creekmore, Attorney for Appellee.

[fol. 342] [File endorsement omitted.]

Endorsed on cover: File No. 39,213. Mississippi, Supreme Court. Term No. 585. Mrs. Oscar C. Doty, et al., Appellants, vs. J. S. Love, Superintendent of Banks of the State of Mississippi. Filed December 19, 1934. File No. 585, O. T., 1934.

INDEX.

SUBJECT INDEX.

Statement of facts showing jurisdiction 1

STATUTES CITED.

Constitution of the State of Mississippi, Article 3, Section 17..... 7
Section 14..... 7
Section 16..... 7
Constitution of the United States, Article I, Section 10..... 7
14th Amendment 7
Laws of Mississippi of 1932, Chapter 251..... 2, 6, 9, 11
Chapter 251, Section 3..... 10
National Bankruptcy Act 11

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 585

MRS. OSCAR DOTY ET AL.,

Appellants,

vs.

J. S. LOVE, SUPERINTENDENT OF BANKS OF THE STATE OF MISSISSIPPI.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

STATEMENT OF FACTS SHOWING JURISDICTION.

The Peoples Bank & Trust Company of Tupelo, Mississippi, was closed for liquidation on the 24th day of December, 1930, and its affairs were turned over to J. S. Love, Superintendent of Banks, for liquidation, according to the banking laws of this State, and V. S. Whitesides, former Cashier of the bank, was placed in charge as liquidating agent, and the liquidation of the bank proceeded under the direction and supervision of J. S. Love, Superintendent of Banks, until the 15th day of May, 1933.

On the 4th day of May, 1933, a decree was signed by the Chancellor directing that notice be given to the depositors of the bank in liquidation, to appear on the 15th day of May, 1933, and show cause, if any they could, why this bank should not be reopened for business (R. 25-26).

This proceeding was instituted under the provisions of Chapter 251 of the Laws of Mississippi 1932, it being sought by this proceeding to reorganize a bank under the provisions of this law, and a petition purporting to set up the proposed plan was filed in the office of the Chancery Clerk of Lee County, Mississippi, which bill contained a statement of the Peoples Bank & Trust Company as of December 24, 1930, the date of the closing of the bank, showing assets of $2,477,114.78 (R. 19). And attached to the bill as Exhibit No. 2 was a depositor's agreement purporting to have been signed by 75 per cent of the depositors of said bank, and setting out the terms upon which said bank should be reopened (R. 20). Said agreement provided in substance that each depositor should receive 25 per cent of his deposits, payable as follows:

"(*a*) 5 per cent of the original amount (or 20 per cent of the depreciated amount) as of date of reopening.

(*b*) Balance to be paid in instalments whenever collections have been made from the assets taken over from the closed bank shall equal 5 per cent of the present outstanding deposits. All deferred payments are to be without interest.

(3) That the remaining 75 per cent of my, or our, balance or credit is to be charged to my or our account, and set up in a special account to benefit from a trust fund hereinafter provided.

(4) The Superintendent of Banks is to make an examination of the bank, and is to put into the reopened bank a sufficient amount of the assets of the bank now

in liquidation to insure the collection therefrom of sufficient funds to pay to the depositors and creditors of the bank now in liquidation the 25 per cent of their deposits and claims, which are to be assumed as a liability of the reopened bank, and the remainder of the assets of the bank now in liquidation are to be charged out of the bank and carried into a special fund known as "Pool Assets," to be managed and collected by the reopened bank for my or our benefit and distributed *pro rata,* after a sufficient amount has been collected from the present assets of the bank to pay all depositors and creditors 25 per cent of their claims.

(5) That the said special fund designated as a pool and the assets from which it is derived is to be administered and distributed by the reopened bank, under the jurisdiction of the Chancery Court of Lee County, Mississippi, as a trust fund, and subject to the supervision of the Superintendent of Banks, and the said reopened bank is to receive for the handling and collection of same, 10 per cent of the amount which it collects, plus any attorney's fees and court costs incurred.

(6) It is further agreed that the *Peoples Bank & Trust Company is to be reopened with not less than* $35,000.00 *capital stock, fully paid in cash,* and in consideration of the benefits to accrue from the reopening the undersigned, as a depositor or creditor, does *hereby agree that such of the stockholders in the Peoples Bank & Trust Company as shall pay in cash to provide the capital stock for the reopened bank— 50 per cent of the amount of their stock in the Peoples Bank & Trust Company at closing, shall be relieved and released from further liability to the depositors of the bank in liquidation,* but that such stockholders as do not pay 50 per cent of their stock into the capital of the reopened bank shall remain liable for the full amount of their stock liability, and which shall become part of the assets known as the pool, to be administered as a trust hereinabove provided.

(7) Nothing in this agreement is to be construed as relieving the stockholders in the reopened bank from any liability under the law upon stockholders in anything that may occur in the operation of the reopened bank."

On page 21 of the record is a statement of the condition of the Peoples Bank & Trust Company in Liquidation as of May 1, 1933, showing assets of $1,901,672.92, while on page 22 of the record is a statement of the trust funds or "pool assets" which are purported to be held in trust for the benefit of depositors, which assets amount to $1,281,-972.47, leaving a difference of $619,700.45; while on page 23 of the record is a statement showing the condition of the Peoples Bank & Trust Company as of the date of opening, showing assets of $467,214.50, leaving a difference of $152,485.90 between the assets in the pool and the assets carried into the new bank, and the assets shown to be on hand. Under the plan of reopening proposed, assets belonging to the Peoples Bank & Trust Company in the sum of $467,214.50, of which $102,302.98 is cash, are turned over to the new bank, and for which assets the depositors are to receive 5 per cent of the amount of deposit on hand in the closed bank on the date of the reopening, and 20 per cent if and when collections have been made from the assets taken over from the closed bank.

At the time of the closing of the bank there was on deposit to the credit of individual depositors the sum of $685,460.58; savings deposits in the sum of $803,118.44; time certificates of deposit, $159,544.13; cashier's checks in the sum of $10,699.30; and to the credit of the Nettleton branch, $210.18, making a total of $1,659,032.63, 25 per cent of which would be $414,758.15. But, as shown by the statement as of May 1, 1933, there was only $1,311,303.43 in participating certificates outstanding, which participat-

ing certificates under the law represents the deposits entitled to participate in the distribution of the assets, and 25 per cent of this amount is $327,825.85.

The reopening agreement provides for the payment to the depositors of 5 per cent of the deposits; that is, 5 per cent of $1,311,306.43, on reopening. This 5 per cent amounts to $65,565.12, of which 3/5 is derived from the depositors' protective fund to which the depositors were already entitled. Yet, there is turned over to the bank at reopening the sum of $102,302.98 in cash, or $36,737.81 in excess of the amount repaid to depositors on that date. And, in addition thereto, there is turned over to the stockholders of the bank bonds carried at $57,500.00, and, according to the testimony, these bonds are worth in excess of that amount.

It is therefore to be seen from these figures that at the time of the reopening, if the Superintendent of Banks had distributed the cash actually on hand at the time of the entering of the decree in this case, the depositors would have received $36,737.81 more than they did receive, and if the bonds and stocks had been converted into cash at the price at which they were carried into the new bank, he could have paid to the depositors $94,257.00 more than was paid to them at that time, and would have had remaining in his hands bills receivable carried into the new bank as being worth at least $216,892.00; overdrafts of the value of $4,100.00; furniture and fixtures valued at $5,000.00; real estate carried into the new bank at a value of $68,917.00; three bank buildings carried into the new bank at the value of $12,500.00; which, with the other items listed as carried into the bank, makes the sum of $467,214.50; although according to the testimony these assets are worth considerably more than the values at which they were carried into the new bank. Thereby depriving appellants of

their property without due process of law or without compensation having been made therefor.

The bill further shows on its face that at the time of the filing thereof the Superintendent of Banks had in his hands the sum of $10,905.10, collected on account of stockholders' liability, in excess of 50 per cent of their liabilities, which sum he proposed to refund to the stockholders upon their taking stock in the new bank, which $10,000.00 if added to the amount that could be paid to the depositors out of the assets on hand; and inasmuch as all public funds, bills payable to correspondent banks and preferred claims had been satisfied, there was available for payment to the depositors assets of the face value of $1,901,672.29, as shown by Record page 21.

Mrs. O. C. Doty was served with process in this case, but Mrs. Lorene Roberts Tolman, a non-resident, was not, and, so far as the record discloses, had no notice or knowledge of this proceeding until after the entering of the decree herein. Mrs. Doty filed exceptions or objections to the reopening, as did a number of other depositors.

In the objections filed, appellants objected to the reopening of the bank upon the terms proposed and assigned many objections, among which were the following: That the funds of these depositors were deposited in the bank prior to the passage of Chapter 251 of the Laws of Mississippi 1932, and that said funds were deposited subject to the conditions named in the pass book of those who deposited in savings accounts, and under the terms of the deposit slip issued to those depositing in checking accounts, with the right on the part of all said depositors to withdraw their funds, from time to time, as they saw fit, according to the terms of the deposit, and with all the rights, privileges and remedies then provided by law for the enforcement of collections of the same, and under the laws

theretofore enacted and then in force for the benefit of depositors and for the liquidation of banks, and alleged that the statute under which this bill was filed for the reopening of said bank was unconstitutional and of no force and effect, in so far as any rights on the part of said Superintendent of Banks to have said bank reopened upon the terms set out in the petition, for the reason that the said statute violates Article 1 of Section 10 of the Constitution of the United States, and Section 16 of the Constitution of the State of Mississippi; and also violates the 14th Amendment to the Constitution of the United States and Section 14 of the Constitution of the State of Mississippi of 1890; that it also violates Section 17 of Article 3 of the Constitution of the State of Mississippi; and assigns the further ground that the law as written and attempted to be enforced in this case is unlawful and unjust in that it makes no distinction in the right to petition for composition or reopening of the bank between ordinary depositors and stockholders being depositors therein, and is further unlawful and unjust in that it attempts to give correspondent banks the right to collect in full the money due them by the failed bank, and denies such rights to private citizens, partnerships, or other corporations, who have loaned money to said bank and hold their obligations therefor. Further, that it is not proposed for the stockholders in the new bank to place any additions, by way of capital stock, surplus, or anything else of value, other than the amounts to be taken from the present assets of said bank belonging to the depositors. Further, because it proposes to remit one-half of the stockholders' liability of the solvent stockholders who will pay into the reorganized bank, one-half of their liability to be used as capital stock, and in consideration of the payment of which there is to be issued

to the stockholders in the new bank certificates of stock therefor, and to release the entire amount of the stockholders who are solvent, from liability for the payment of the stock liability fixed by law, in contravention of the provisions of the statute which provides expressly that the funds derived from the stockholders' liability shall be used for the payment of the depositors and no other, and thereby creates a special trust fund for the benefit of depositors. It is further assigned as an objection that it is proposed to refund to certain favored stockholders more than $10,000.00 of funds already collected and held in trust by the Superintendent of Banks for the benefit of depositors; said $10,000.00 having been collected from the stockholders' as stockholders' liability on account of stock held by them in the Peoples Bank & Trust Company in Liquidation. Further, that under the proposed terms the depositors are to receive no interest on the amounts proposed to be paid to them out of the assets of said bank, while all of the assets proposed to be turned over to the new bank or reorgnized bank bear interest, or bring in income. Further, because no time is fixed whatever for any payment other than the 5 per cent cash on the reopening of said bank. Further, for the reason that it is proposed to transfer the title in and to the stock of the value of thousands of dollars, and real estate in the amount of $373,623.00, and bank buildings of the value of $55,000.00, to the reopened bank, and to vest title to said property in said bank with a signed agreement or understanding that the new bank will agree upon the disposition of said property, and retain for its own use and benefit, from the sale of stocks and bonds $7,500.00, furniture and fixtures $5,000.00, real estate $68,917.50, three bank buildings $12,500.00. Further, because it is proposed in said plan for the new bank to receive a flat rate of 10 per cent on all small sums collected from the

assets in the so-called pool, regardless of the expenses or trouble that may be necessarily incurred in making such collections, and also all attorneys' fees expended in realizing on said assets, and to receive in addition thereto all the rents, interest, incomes, and profits from said property placed in said pool, in which is included real estate of the value of $425,000.00 which is to be turned over to the said bank for no consideration whatever, and without any income or profits to be derived therefrom by the depositors, it being provided in said proposed plan that, "It is further contemplated that all rents and income coming from this real estate is to be carried into the reopened bank, as long as the reopened bank carries a real estate account on their books." It is further proposed in said plan that the new or reopened bank have the use of the bank buildings and fixtures, three in number, without paying any rent therefrom to the depositors or creditors. It is further set out in the objections that many large, reckless and illegal loans were made contrary to law to the officers and directors, and relatives of the officers and directors, and that no provision is made for the collection or prosecution of any claims against officers and directors for these illegal and excessive loans.

It is also further urged by the objectors that Chapter 251 of the Laws of Mississippi 1932, is unconstitutional and void and violative of the State and Federal Constitutions, in that it provides for no notice of a hearing, and that the Chancery Court was without jurisdiction under any statute now existing in the State of Mississippi for the hearing and determination of this class of cases in vacation, without the consent of all parties in interest, and set out in said objection that if they were mistaken as to the constitutionality of said section that the plan proposed

was in direct conflict with Section 3 of said Chapter, which is as follows:

> "That this Act shall not be so construed to give the Superintendent of Banks the right to diminish the assets of a closed bank to the prejudice of depositors and creditors thereof, and any assets that may be charged out as doubtful, or as losses, shall be held by the bank and collected for the benefit of its depositors and creditors, and all accounts so collected shall be held by the bank to be paid by them in accordance with the agreement for the repayment of their deposits and claims."

The proposed plan provides for the diminishing of the assets and obsolute transfer of several hundred thousand dollars of assets of said bank without any consideration whatever therefor, and does not provide for the prosecution of any meritorious claims that may exist against officers and directors for the negligent, careless and unlawful handling of the original bank's affairs, or the prosecution and recovery of any claims to which the depositors may be entitled against the various surety companies for and on account of liability of officers and employees for the illegal acts of the officers, directors, and employees of said bank.

That the bond of the liquidating agent is attempted to be cancelled; also the bond of the Superintendent of Banks, which bond is required by statute as a condition precedent to his entering upon the discharge of his duties as such. That the proposed plan is inequitable, unjust and unauthorized by law, and results in impairing the obligations of the contracts of the objectors and all other depositors, and deprives them of their property without due process of law, and without compensation first having been made therefor.

Further, that neither the court nor the Superintendent of Banks has any authority of law to remit or relieve stock-

holders of their liability on account of stock owned by them in insolvent banks.

That no provision is made in the proposed plan as to the payment of the percentage to which the depositors of the Peoples Bank & Trust Company in Liquidation are entitled to receive from the "Depositors' Protective Fund," under the laws of the State of Mississippi.

Mrs. Lorene Roberts Tolman not being a party to the suit in the court below, and having no notice thereof, so far as the record discloses, now raises the further ground that Chapter 251 of the Laws of Mississippi 1932, in so far as it affects her, is unconstitutional and in conflict with the National Bankruptcy Acts of the United States, and that she cannot be deprived of her rights as a creditor of said bank proceedings of this character.

In the depositor's agreement filed as an exhibit to this bill there was no mention of any distinction between the amounts to be paid to the various depositors, but under the decree entered herein certain of the depositors are paid in full, while others are paid in accordance with said agreement. Neither is there anything in the depositor's agreement setting up that the reorganized or new bank shall receive all the incomes, rents and profits from the assets of said bank in liquidation, although the decree so provides. Neither is there anything in the depositor's agreement to show that any refund was to be made to the stockholders who had already paid their stock liability. Nor is there anything in said agreement advising or proposing that the title to all the real estate and other assets shall be vested in the new bank without consideration to the depositors in the old bank. In fact, by a comparison of the depositor's agreement with the decree entered in this cause it will be readily seen that the decree is not in accordance with the

proposed plan as set out in the original bill, or the depositor's agreement, in many particulars.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

MRS. BIRDIE LOWRY DUNN, ET AL.....Appellants

V.

J. S. LOVE, SUPERINTENDENT OF BANKS, ET AL, ...Appellees

BRIEF OF APPELLANTS OPPOSING MOTION OF APPELLEES TO DISMISS ON THE QUESTION OF JURISDICTION

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JOURNAL, TUPELO

INDEX

	Pages
STATEMENT OF THE CASE	3-15
BRIEF AND ARGUMENT	15-29
I	
United States Supreme Court Is Vested With Jurisdiction To Hear and Determine Appeal	15-16
II	
Motion To Dismiss Appeal Should Be Overruled	16-17
III	
Federal Questions Are Material, Real and Substantial	17-18
(a)	
Question of Impairment of Contract Obligations Under Federal Constitution Material, Real And Substantial	18-22
(b)	
Question of Deprivation of Property Without Due Process of Law Under Federal Constitution Material, Real and Substantial	22-26
(c)	
Question of Denial of Equal Protection of The Laws Under Federal Constitution Material, Real And Substantial	26-28
Conclusion	28-29
Certificate	29

STATUTES CITED

United States Code Title 28, Section 344	3, 4, 14, 15, 16
Judicial Code, Section 237	3, 14, 15, 16
United States Constitution, P. 1, Section X	7, 12, 14, 15
United States Constitution, P. 1. Amendment XIV	4, 7, 12, 14, 15, 24, 25, 27
Chapter 85, Code of the State of Mississippi 1930	4, 19
Chapter 82, Hemingway's Code, State of Mississippi 1917	19
Secton 3815, Code of the State of Mississippi 1930	19
Section 3619, Hemingway's Code of the State of Mississippi 1917	19
Chapter 251, Laws of the State of Mississippi 1932	4, 5, 6, 12, 15, 17, 24, 26
Chapter 58 of the Code of the State of Mississippi 1930	23
Section 2965, Code of the State of Mississippi 1930	23

Section 2969, Code of the State of Mississippi 1930 23
Section 2972, Code of the State of Mississippi 1930 23
Section 2973, Code of the State of Mississippi 1930 23
Section 2977, Code of the State of Mississippi 1930 23
Chapter 143, Laws State of Mississippi 1932 23
United States Code, Section 344 ..... 14, 15, 16
Judicial Code, Section 237 ..... 14, 15, 16

TABLE OF CASES

Barnitz vs Beverley, 163 U. S. 122 21
Bohannon vs Nebraska 118, U. S. 231 28
Bonslog vs City of Gulfport, 112 Miss. 184 25
Bronson vs Kinzie 1, Howard 311 21
Buchanan vs Marley 245, U. S. 60 27
Burton vs Pepper, 116 Miss. 139 25
Cooley Constitutional Limitations Vol. 1, Page 592 21
Coe vs Armour Fertilizer Co., 237 U. S., 413 25
Dunn et al vs Love et al, 155 So. 331 ..... 3, 13, 25
Evans vs Brown 109 U. S., 180 17
Farrington vs Tennessee, 95 U. S., 683 21
Green vs Biddle 8, Wheatley 84 ..... 21, 21
G. C. & S. F. R. R. Co. vs Ellis, 165 U. S., 150 27
J. J. Newman Lumber Co vs Pace 137, Miss. 504 25
Maxwell vs Bugbee, 250, U. S. 525 27
McCracken vs Hayward 11, U. S. 1 21
Ohio Life Ins. Co. vs. Debolt 16, Howard 432 22
Paulsen vs Portland 149, U. S. 38 25
Pennoyer vs Neff 95, U. S. 714 24
Pine Grove vs Talcott 19, Wallace 666 22
Ponder vs Martin 119, Miss. 156 25
Rees vs Watertown 29, L. Ed 72 21
Royster Guano Co. vs Virginia 253, U. S. 412 27
Ruckman vs Bergholz 23, L. Ed. 1008 17
Stuart vs Palmer 74, N. Y. 183 25
Sturges vs Crownshield 4, Wheatley 197 21
Sunday Lake Iron Co. vs Wakefield 247, U. S. 350 27
Swift vs McPherson 232, U. S. 51 22
Walker vs Whitehead 16, Wallace 314 21
Walston vs Nevin 128, U. S. 578 17
Y. &M. V. R. R. Co. vs Lawler 130, Miss. 421 25

IN THE

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OCTOBER TERM, 1934

MRS. BIRDIE LOWRY DUNN, ET AL ..... Appellants

V.

J. S. LOVE, SUPERINTENDENT OF BANKS, ET AL, ... Appellees

BRIEF OF APPELLANTS OPPOSING MOTION OF APPELLEES TO DISMISS ON THE QUESTION OF JURISDICTION

STATEMENT OF THE CASE

The above cause is before this court by virtue of an appeal from a judgment of the Supreme Court of the State of Mississippi, affirming a decree rendered in said cause by the Chancery Court of Lee County, Mississippi. The decision of the Supreme Court of the State of Mississippi in said cause is found reported in the case of **Dunn, et al, v. Love, et al, 155 So., 331,** to which reference is here made.

The appeal, as shown by the record, is taken under the provisions of **United States Code, Title 28, Section 344, Judicial Code, Section 237,** and amendments, the constitutional issues involved being raised and maintained at all stages in the court below, namely, that the statute in question, as construed by the Supreme Court of the State of Mississippi, and the judg-

ment of said Court impairs the obligations of certain contracts; denied to appellants the equal protection of the laws', and deprives them of their property without due process of law in violation of **p. 1, Sec. 10, of the Constitution of the United States and p. 1 of the 14th Amendment to the Constitution of the United States;** and the protection of said provisions of the United States Constitution was specifically invoked. (Tr._____).

The facts in the case are substantially as follows:

On December 24, 1930 the Peoples Bank and Trust Company of Tupelo, Mississippi became insolvent and was placed under the charge of the State Banking Department for liquidation, as provided by **Chapter 85 of the Code of 1930 of the State of Mississippi (Appendix A),** and remained in process of liquidation until the 15th day of May, 1933 when a petition to reopen the bank in question was filed in the Chancery Court of Lee County, Mississippi, under **Chapter 251 of the Laws of the State of Mississippi 1932, (Appendix B).**

The record shows that when the bank in question closed for liquidation on December 24, 1930, its assets and liabilities were **$2,477,114.78,** with a capital stock of $200,000.00, and a surplus of $75,000.00. (Exhibit I to Petition, Transcript 19.)

The record shows that on May 1, 1933 the bank in question had assets of the stated value of $1,901,672.92 with a deposit liability in excess of $5.00, of $1,311,303.43, and a deposit liability under $5.00 of $3649.87. (Exhibit III to Petition, Transcript 21.)

On the 18th day of May, 1932 the Legislature of the State of Mississippi enacted and passed Chapter 251 of the Laws of the State of Mississippi, 1932, which said statute has as its purpose the reopening of banks theretofore closed by reason of insolvency.

On the 15th day of May, 1933 J. S. Love, Superintendent of the State Banking Department, and certain members of a depositors' committee, acting under the authority of **Chapter 251 of the Laws of the State of Mississippi, 1932,** filed a petition in the Chancery Court of Lee County, Mississippi requesting the court to enter a decree reopening the bank in question, and approve the plan submitted upon which the reopening of the bank in question was to be based. (Tr. 1-25.)

The petition filed discloses an effort to comply with the formal requirements of Chapter 251 of the Laws of the State of Mississippi, 1932, in that it states that (a) more than three-fourths of the general depositors and creditors of the Peoples Bank and Trust Company, or general depositors owning three-fourths of the claims against the said Peoples Bank and Trust Company, have signed what is commonly termed a "freezing of deposits agreement" (Appendix C) under which said agreement the depositors signing agreed to accept repayment of their deposits and claims, over a period of years, the full amount thereof, or in reduced amounts, with or without interest, the period over which the deposits and claims are to be repaid and the rate of payment, together with the interest rate, if any, to be determined by the Superintendent of Banks; that (b) the Superintendent of Banks is convinced that the bank is in a solvent condition and can repay the depositors in accordance with the terms of the agreement and the repayment of same; that (c) incorporated in said petition is the plan upon which the bank is to be reopened; and, finally, (d) attached to the petition is a statement of the assets and liabilities of the bank as of the date of reopening, as is required by **Chapter 251 of the Laws of the State of Mississippi, 1932,** (Tr. 1-25.)

Upon the filing of the petition in question, and in accord-

ance with a part of the prayer thereof, the Chancellor, in vacation, towit., the 4th day of May, 1933, entered an order setting the cause for hearing in vacation on the 15th day of May, 1933, and ordered the clerk of the Chancery Court to issue process for all parties interested by publishing a general notice of said hearing in a weekly newspaper published in Lee County, Mississippi, commanding all the depositors, creditors, and other parties in interest to appear before the Chancellor in vacation at a designated place and time, to show cause, if any they could, why the prayer of the petition in said matter should not be granted, and further ordered the clerk of the Chancery Court to issue personal process on fifteen of the general depositors of said bank, to appear and answer the petition on the day and date designated, which said fifteen depositors were to be considered as a class, such service of process to bind all the depositors and creditors of said bank. Personal service seems to have been obtained on three of the depositors, as shown by the record, the record further showing that some were non-resident corporations of the State of Mississippi (Tr. 25-28).

The appellants in this cause appeared on the day and date designated to answer the petition in question and filed elaborate objections to the granting of the prayer of said petition. In the objections filed, appellants challenged the validity of the entire proceedings, including the validity of Chapter 251 of the Laws of the State of Mississippi of 1932; the validity of the plan submitted upon which to base the reopening of the bank in question; the validity of the process issued and the validity of the procedure adopted as being obnoxious and repugnant to and in violation of certain of the provisions of the Constitution of the United States, in that, Chapter 251 of the Laws of the State of Mississippi, 1932; the plan submitted

under which said bank was to be reopened; and, the entire procedure adopted and followed, impaired obligations of contracts theretofore existing between appellants and the defunct bank in question, in violation of **Section 10, Paragraph 1 of the Constitution of the United States**; deprived appellants of their property without due process of law; and denied to appellants the equal protection of the laws, in violation of **Paragraph 1 of the 14th Amendment, to the Constitution of the United States** (Tr. 77-88).

When the hearing of the cause, upon the petition filed by appellees, and the objections filed by appellants, was concluded, the Chancellor in the court below overruled the objections of appellants and entered a decree authorizing the bank in question to reopen as a new bank, upon the plan or scheme as set forth in the decree (Tr. 89-113).

The decree entered in the cause is in substance as follows:

The bank in question, upon opening, was to charge itself with twenty-five per cent of the amount of deposits and claims due depositors and general creditors of the insolvent bank, as of the date of re-opening, to-wit,

May 15, 1933, with the exception of those deposits and claims under $5.00. As to the balance of the seventy-five per cent of the deposits and claims due depositors and general creditors, such was to be charged out of the bank and the bank was to be released of any further liability for the payment of ~~said~~ same to be charged only against what is denominated as "pool assets" (Tr. 93-94).

Upon the opening of the bank in question, said bank was to pay five per cent of the amount of the original deposits in the insolvent bank to the depositors thereof, the balance of the twenty per cent of same to be paid in succeeding installments

of five per cent whenever collections from the assets carried into the new bank shall equal five per cent of the then outstanding claims and deposits against the new bank (Tr. 93-94.), and as to all deposits and claims under five dollars, the new bank, upon opening, was to pay same in full (Tr. 93-94).

That assets of the insolvent bank of the value of $491,-708.45, of which amount $19,186.44 is represented by secured notes given on account of capital structure of the new bank, is to be set over to the new bank, and carried on its books at a valuation of $216,892.08. The new bank is to collect out of said assets the sum of $216,892.08, and when such sum has been collected, the remainder of the assets are to be transferred to the pool, to be there held to pay the seventy-five per cent of the deposits and claims charged out of the bank. (Tr. 95).

That bonds carried at a value of $81,610.15 in the insolvent bank are to be set over into the reopened bank, after giving effect to capital structure, at a value of $50,000.00, out of which the new bank is to collect $50,000.00, and the balance remaining, after the collection of said $50,000.00, is to be transferred to the "pool assets." That overdrafts of the insolvent bank, in the amount of $4,101.94, are also to be set over to the new bank. That stocks and bonds of the insolvent bank of the value of $37,468.60, are to be set over to the new bank, from which the sum of $7,500.00 is to be collected by the new bank, and the balance transferred to the "pool assets." That all furniture and fixtures of the insolvent Peoples Bank and Trust Company at Tupelo, Rienzi, and Nettleton, Mississippi of the value of $20,000.00, shall be set over unto the new bank at a valuation of $5,000.00, the "pool assets" to receive all amounts over and above the sum of $5,000.00 that may be realized therefrom.

That real estate of the value of $375,723.86, after giving effect to capital structure, is to be set over unto the new bank at a valuation of $68,917.50. That the three bank buildings owned by the bank in liquidation, of the value of $55,000.00, are to be set over unto the new bank at a valuation of $12,500.00, and all sums realized from same, over and above $12,500.00, are to be transferred to the "pool assets." That assets of the value of $1,065,613.00, belonging to the bank in liquidation, or the depositors and general creditors of same, are to be set over unto the new bank at a valuation of $394,880.12, out of which the new bank is to collect the sum of $295,994.02, which it shall retain for its own use (Tr. 95-97). That there is to be set over unto the new bank, all cash on hand belonging to the bank in liquidation as of date of May 1, 1933, to-wit: the sum of $102,302.98 (Tr. 97-99).

That the new bank is to receive all interest collected on the notes and bonds set over unto it until the full principal sum for which said notes and bonds were set over unto the new bank shall have been collected; all dividends and earnings from stocks and bonds until the new bank shall have realized the sum of $7,500.00 from the sale of same; and all rents, issues and earnings from all real estate set over unto the new bank, until the new bank shall have realized the sum of $68,917.50 from the sale of all, or any portion of said real estate, the new bank in return therefor to pay all taxes, insurance, and upkeep on same, all expenses expended in the preservation and upkeep of said property occasioned by acts beyond the control of the reopened bank shall be chargeable against the assets of the pool. (Tr. 98-100).

That in return for the setting over unto the new bank in question the assets heretofore mentioned and other benefits, the new bank assumes a liability to the depositors and general

creditors to the extent of twenty-five per cent of the principal amount due them by the bank in liquidation, to be paid at the rate of five per cent upon opening and the balance of twenty per cent in deferred installments, if and when collected as heretofore set forth in this statement (Tr. 100-101).

That the new bank is to be released from the payment of, or any liability to pay, the seventy-five per cent balance due the depositors and general creditors on their claims, but such balance is to be be paid from the "pool assets" to be collected and held in trust by the new bank and administered under the jurisdiction of the Chancery Court of Lee County, Mississippi with J. S. Love in charge of same as "the agent of the court" there being no definite time stated as to when the collections from the "pool assets" shall be paid to the depositors and general creditors.

That the new bank is to receive as compensation for collecting and handling the "pool assets" in question, ten per cent of all amounts collected on same, except such sums as are collected by the sale of any of the real estate, stocks or bonds belonging to the pool. That the new bank is to be reimbursed for all attorney's fees and court costs expended in collecting the assets of the pool, and preserving same, and all expenses incurred in the protection and preservation of said assets. (Tr. 103-104).

That the new bank shall open with a capital stock of not less than $35,000.00, fully paid in cash, and that all the stockholders of the former insolvent Peoples Bank and Trust Company, who shall pay into the new bank fifty per cent of their stock liability incurred by reason of the closing of the Peoples Bank and Trust Company shall be released of fifty per cent of their stock liability and from any further liability to the depositors and general creditors, as such stockholders of said in-

solvent banking institution, and that the sum of $10,000.00 theretofore paid to the bank in liquidation in excess of fifty per cent of the stock liability of the stockholders therein should be refunded such stockholders and that all judgments theretofore entered against said stockholders of said insolvent Peoples Bank and Trust Company by reason of their stock liability, should be cancelled, and that the original stock held and owned by the stockholders in the insolvent banking institution should be released to such stockholders and any and all securities as may have been taken from such stockholders to secure the payment of the statutory liability incurred by virtue of being stockholders in the insolvent banking institution should be delivered to such stockholders; and that all stock of said insolvent banking institution should be cancelled. (Tr. 107-109).

That additional assets should be set over unto the new bank to provide a surplus to the extent of $35,000.00 and reserve to the extent of $10,000.00, same to be repaid into the "pool" out of the earnings of the reopened bank, all earnings, after the payment of expenses to the amount of $7,500.00 per year, to be paid into the pool for the repayment of said amounts so provided, without interest (Tr. 110-111).

That upon complying with the provisions of the decree, the said Superintendent of Banks and the liquidating agent of the Peoples Bank and Trust Company, are discharged fully and finally in the liquidation of said defunct bank and each of them and their bondsmen are released from any and all liability on account thereof. (Tr. 112.)

It is further adjudicated in the decree that the charter of incorporation of the Peoples Bank and Trust Company has been amended reducing the capital stock from $200,000.00 to $55,000.00; that the interest of all old stockholders of the Peoples Bank and Trust Company at the time it closed for

liquidation has been consumed; that all stockholders in the Peoples Bank and Trust Company in liquidation have been called on for their statutory double liability as provided by law; that the old certificates of stock should be cancelled and surrendered to the proper officers of the corporation; that new certificates be isued to the stockholders in the new or reopened bank; and, that all old stockholders who have not provided the assets for new capital stock, shall have no interest in the assets of the new corporation.

It is further provided in the decree "that all expenses incurred in the liquidation of the Peoples Bank and Trust Company and in the reopening of said bank up to the date of reopening, shall be paid out of the assets taken into the pool, which expenses shall include the cost incurred in this cause, and in any other legal proceedings had in the liquidation, and which expenses are to be a charge against the assets taken into the pool, and should the reopened bank pay any such expenses, it is authorized to be reimbursed therefor from the pool" (Tr. 111).

An appeal to the Supreme Court of the State of Mississippi from said decree was granted appellants in said cause (Tr. 112).

Appellants perfected their appeal to the Supreme Court of the State of Mississippi in the method as required by law, and filed joint and separate assignments of error, the assignments of error setting forth that the decree of the court below, the plan set forth therein for the reorganization of the bank in question, the procedure followed, and the construction placed upon **Chapter 251 of the Laws of the State of Mississippi 1932, by the court violates paragraph 1 of Section 10 of the Constitution of the United States and Section 1 of the 14th Amendment to the Constitution of the United States.**

On June 5, 1934 the Supreme Court of the State of Mississippi entered a judgment affirming the decree of the Chancery Court of Lee County, Mississippi entered in said cause, and said opinion clearly demonstrates the fact that all the constitutional questions and issues were passed upon by said court adversely to the claims of these appellants as to their rights under said provisions of the Constitution of the United States, **(See Transcript; Opinion of Supreme Court of State of Mississippi in Case of Dunn vs Love 155 So. 331).**, said judgment being a final judgment of the highest court of the State of Mississippi and being the court of last resort.

Appellants, in due time, and in the manner as directed by law, filed a suggestion of error permitted under the procedure of the State of Mississippi, and this suggestion of error, necessary to make the judgment of said court final, was overruled by the Supreme Court of the State of Mississippi at the September Term, 1934 of said court.

Appellants then, as required by the rules of this court, prayed for and obtained an appeal to the Supreme Court of the United States, and the Chief Justice of the Supreme Court of the State of Mississippi entered the proper order granting the appeal and bond having been filed and approved, as required, the proper citation for appellees to appear in this court, was issued.

The transcript shows that the procedure for obtaining said appeal was in compliance with the rules of this court and of the statutes made and governing such appeals.

The assignments of error filed by appellants in conjunction with the petition for appeal show that they again raised the constitutional questions and issues in the case, in that they assigned as error that the judgment of the Supreme Court of

the State of Mississippi violates Paragraph 1 of Section 10 of the Constitution of the United States; and, Section 1 of the 14th Amendment to the Constitution of the United States, thereby preserving, at all stages of this cause, the constitutional issues involved.

The statement relative to the jurisdiction of this court and all documents necessary toward the perfecting of this appeal were served upon appellees, and appellees, as the transcript will show, filed their statement setting up facts contending against the jurisdiction of the Supreme Court of the United States to hear and determine this appeal, and simultaneously filed therewith a motion to dismiss said appeal, as permitted by the rules of this court, for the reasons, and upon the grounds stated therein (See Transcript).

In accordance with the rules of this court, appellants herein present this their brief opposing the motion filed by appellees to dismiss this appeal, and setting forth the grounds upon which jurisdiction of this court to hear and determine this appeal is claimed.

BRIEF AND ARGUMENT

I

THE SUPREME COURT HAS JURISDICTION TO REVIEW THE APPEAL IN QUESTION

The Supreme Court of the United States is vested with jurisdiction to review and determine the appeal in this case. The record shows that the appeal is taken under Section 344 of the United States Code; Section 237 of the Judicial Code, as amended, the pertinent provisions of said statute relating

to the jurisdiction of the Court on this appeal being as follows:

"A final judgement or decree in any suit in the highest court of the state in which a decision in a suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error (now by appeal). The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such state court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

The record in this case clearly discloses that the validity of **Chapter 251 of the Laws of the State of Mississippi of 1932**, was challenged by appellants in all the courts below on the grounds that the state statute in question and the construction placed upon same by the Supreme Court of the State of Mississippi is and was repugnant to the Constitution of the United States, as violating **p. 1 of Section 10 to the Constitution of the United States, and p. 1 of the 14th Amendment to the Constitution of the United States**, the decision of the Supreme Court of the State of Mississippi, the highest court of the State, being in favor of the validity of said statute.

Therefore, it is clear that the jurisdiction of this Court under **Section 344 of the United States Code; Section 237 of**

the Judicial Code, as amended, to review and determine this appeal, is complete.

II

THE MOTION TO DISMISS THE APPEAL SHOULD BE OVERRULED

Under the decisions of this Court, the motion to dismiss the appeal in question must necessarily be overruled.

The record discloses that the motion incorporated in appellees' statement making against the jurisdiction of the Court to review and determine this case upon appeal is a motion to dismiss only without any motion whatever to affirm although conceding that federal questions are involved for decision.

It is well settled by the decisions of the Supreme Court of the United States that where jurisdiction to review a case upon appeal is vested in the Court by virtue of **Section 344 of the United States Code; Section 237 of the Judicial Code,** as amended, a simple motion to dismiss will be overruled where the record discloses that federal questions are presented in the case for review. In fact, under the decisions of this Court, this Court has no authority to dismiss an appeal upon a simple motion to dismiss, where a federal question is presented regardless of other circumstances affecting the federal question, or questions involved. This Court will overrule a motion to dismiss even where it is clear that the federal questions are moot, frivolous, or without substantial merit unless accompanied by a motion to affirm. Even then the

appeal will not be dismissed but by the decision of the highest state court will be affirmed.

Ruckman vs Bergholz 23 L Ed 1008

Evans vs Brown 109 US 180

Walston vs Nevin 128 US 578

It is, therefore, clear that appellees' motion to dismiss must be overruled because of the presence of federal questions in the case, there being no accompanying motion to affirm.

III

THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL, REAL, AND MATERIAL, INVOLVING PROPERTY RIGHTS OF APPELLANTS, GUARANTEED TO THEM BY THE FEDERAL CONSTITUTION AND WHICH APPELLANTS CLAIM TO HAVE BEEN ABRIDGED BY THE STATUTE AND JUDGEMENT INVOLVED.

The record discloses at each and every stage of the proceedings, appellants challenged the validity of **Chapter 251 of the Laws of the State of Mississippi 1932** and the validity of the decree and judgment on the following grounds:

(a) **That Chapter 251 of the Laws of the State of Mississippi 1932** and the decree and judgment of the Courts below impaired the obligation of certain contracts existing between them and the defunct bank in question in violation of **paragraph I of Section 10 of the Constitution of the United States.**

(b) **That Chapter 251 of the Laws of the State of Mississippi 1932** and the decree and judgment of the

Courts below and the proceedings followed deprived them of their property without due process of law in violation of **paragraph I of the 14th Amendment to the Constitution of the United States.**

(c) **That Chapter 251 of the Laws of the State of Mississippi 1932** and the decree and judgment of the Courts below denies to appellants the equal protection of the laws in violation of **paragraph 1 of the 14th Amendment to the Constitution of the United States.**

It appears to us that even though appellees had filed a motion to affirm, such motion would necessarily be overruled because a mere glance at the above outline in light of the record discloses that the questions are neither moot, without merit, or that same have been previously decided by this Court precluding and rendering unnecessary further decision. On the other hand, the above questions appear to us to be very serious questions when considered in the light of the record before this Court. We shall, however, briefly point out certain admitted facts in the record that preclude any idea that such questions are moot, frivolous, or without merit, and that same have been definitely decided by this court.

(a)

THE CLAIM OF APPELLANTS THAT THE OBLIGATION OF THE CONTRACTS EXISTING BETWEEN THEM AND THE DEFUNCT BANK WAS IMPAIRED IS MERITORIOUS, SUBSTANTIAL, AND REAL.

The record discloses that long prior to the closing of the bank in question by reason of insolvency, these appellants

made their deposits therein thereby bringing into existence the contracts in question and giving rise to the relation of debtor and creditor between themselves and the defunct bank in question. The record further discloses that at the time of the incipiency of the contracts in question, there was a definite code of laws in existence in the State of Mississippi, the situs of the contracts in question, which said code of laws related to banks generally. That said code of laws **(Chapter 85 of the Code of Mississippi 1930; Chapter 82 Hemingway's Code of the State of Mississippi 1917)** fixed the liability of stockholders owning and possessing stock in banks and fixed the liability of such stockholders to the creditors of banking institutions at double the amount of the stock owned and possessed by them. **(Section 3815 Code of the State of Mississippi 1930; Section 3619 Hemingway's Code of the State of Mississippi 1917).** The record further discloses that the judgment of the Supreme Court of the State of Mississippi affirming the decree of the Chancery Court of Lee County, Mississippi in the case relieved all stockholders of further liability to the depositors and general creditors of the defunct banking institution; provided, such stockholders should pay into the new bank 50% of their stock liability incurred by reason of the insolvency and closing of the defunct bank in question; that a sum in excess of $10,000 theretofore collected from such stockholders by the bank in liquidation in excess of 50% of the stock liability of the stockholders therein should be refunded such stockholders; that all judgments theretofore rendered and enrolled against such stockholders by reason of their liability should be cancelled and satisfied; that any and all securities held by the bank in liquidation to secure the payment of the stock liability of such stockholders should be delivered to such stockholders; and, that all the stock of the defunct bank in question should be cancelled.

The record further discloses that real estate of the value of several hundred thousand dollars was set over unto the new bank at a value far under its real value and that the new bank in question was to receive the rents and income from same of whatever nature for its own use and that stocks and bonds of the value of many thousand dollars were set over unto the new bank at a value far less than their actual value, the new bank to receive all income therefrom for its own use. The record further discloses that the sum of $102,302.92 in cash in the possession of the bank in liquidation is to be turned over to the new bank, and that assets of the value of $1,065,613.00 belonging to the bank in liquidation are to be turned over to the new bank in question out of which assets the new bank in question is to collect the sum of $295,994.02 to be retained by and used by it. The record discloses many other items similar to the above but for the sake of brevity we will dispense with calling the attention of the Court to same.

We, therefore, respectfully submit that the appellants under the contracts in question had a right to look to the double liability of the stockholders and to the assets of the defunct bank in question for the payment of their deposits and claims and that the release of the stockholders of the defunct bank in question of all, or any part, of such liability and the setting over unto the new bank in question of assets in excess of one million dollars and the cancellation of judgments enrolled against such stockholders impaired the obligation of the contracts existing between the defunct bank in question and the appellants, (its depositors,) and the authorities so hold.

It is well settled under the law that all laws which exist at the time and place of the making of a contract and where it is to be performed enter into and form a part of it. This

embraces those laws which affect its validity, construction, discharge and enforcement.

Walker vs Whitehead 16 Wallace 314.

It is further well settled that the obligation of a contract is the law which binds the parties to perform same.

Sturges vs Crowinshield 4 Wheatley 197.

It is further well settled that any law that releases any part of the obligation of a contract, abridges same, or dispenses with expressed conditions therein impairs the obligation of same.

Green vs Biddle 8 Wheatley 84.

It is further well settled that the amount of the impairment of the obligation is immaterial. If there be any, it is sufficient to bring into activity the constitutional provisions and the judicial power of the court to redress the wrong.

Farrington vs Tennessee 95 US 683.

It is well settled by the authorities that the remedies provided for the enforcement of contracts in existence at the time of the execution of same enter into and form a part of its obligation and any law of the state, or judicial action that lessens, or materially alters same, or destroys same, impairs the obligation of the contract and is void.

McCracken vs Hayward 11 US 1.
Bronson vs Kinzie 1 How. 311.
Cooley Cons. Lim. Vol. 1 592.
Rees vs Watertown 29 L Ed 72.
Walker vs Whitehead 16 Wallace 314.
Barnitz vs Beverley 163 US 122.
Green vs Biddle 5 L Ed 547.

It is well settled that impairment of the obligation of a

contract by judicial decision falls within the constitutional prohibition.

Pine Grove vs Talcott 19 Wallace 666.
Swift vs McPherson 232 US 51.
Ohio Life Insurance Co. vs DeBolt 16 How. 432.

We, therefore, respectfully submit that under the above authorities when applied to the admitted facts in the record as set out above, the obligation of the contracts existing between the appellants and the defunct bank in question were impaired. To say the least, such a question is substantial, real and material, as it clearly appears that the value and force of the obligation of the contracts in question were lessened; the remedies provided for the enforcement of same were taken away from appellants; and, vested rights were nullified.

(b)

THE CLAIM OF THE APPELLANTS THAT CHAPTER 251 OF THE LAWS OF THE STATE OF MISSISSIPPI OF 1932, AND THE DECREE AND JUDGMENT THEREUNDER DEPRIVES THEM OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW IS MERITORIOUS, SUBSTANTIAL AND REAL.

The record discloses that the process issued in this case was issued under order of the Chancellor, commanding all interested persons to appear in vacation on a day certain to show cause, if any they could, why the prayer of the petition filed in the case should not be granted. A general notice of such hearing was ordered published in a weekly newspaper published in Lee County, and personal summons was ordered to be issued upon fifteen interested creditors of the insolvent bank in question, who should be considered as a class.

There is no Statute of Mississippi authorizing a Chancellor to formulate an independent scheme of notice, or process. **Chapter 58 of the Code of the State of Mississippi, 1930,** is the process statute, and provides for summons and publication in various cases. **Section 2965 of the Code** provides that a summons shal not issue in any case, at law or in chancery, until the declaration, bill, petition, or other pleading beginning the cause, shall be filed. The process to bring in defendants at law and in chancery, shall be a summons and it shall command the officer to summon the defendant to appear and answer on the return day. **Section 2969** provides for summons in cases in chancery to be made returnable on a rule day in vacation, sufficiently distant in time to admit of due service thereof, or on the first day of the next regular day, etc. **Section 2972** provides for a summons by publication in a proceeding in the chancery court, where it is shown by affidavit filed, that a defendant is a non-resident of the state, or not to be found therein, and in such case the clerk shall promptly prepare and publish a summons to such party to appear and defend the suit on a rule day in vacation, or on the first day of the next regular term, if thereby the answer of the defendant would be the earlier required. **Section 2973 of the Code of the State of Mississippi of 1930,** provides how unknown and non-resident defendants may be brought into court. **Section 2977** thereof provides for a substitute publication when newspapers will not publish the notice for the compensation provided by law. **Chapter 143 of the Laws of the State of Mississippi, 1932,** relates to the setting of causes in chancery for hearing in vacation, and the summons required to be issued to give notice to interested parties of such hearing.

A careful reading of the whole statute on process will

show that the publication here made was not authorized by any statute of the State of Mississippi. It is necessary for a statute to prescribe how such process shall issue and this must be found in the law itself. **Chapter 251 of the laws of the State of Mississippi, 1932,** does not provide anywhere for the giving of notice to the depositors and creditors; for the issuance of summons; or for the issuance of any process. Therefore, it is clear that there was no statute of the State of Mississippi in force and effect authorizing the scheme of process as formulated by the Chancellor in this cause. A chancellor cannot take the place of the Legislature; such authority cannot be delegated and there has been no attempt to delegate it in the manner in which it is attempted to be exercised in this case.

Pennoyer v. Neff, 95 U. S., 714.

It is well settled by the authorities that due process of law means that a citizen must be accorded a hearing in a legal manner, according to the principles of jurisprudence in force and effect relating to the hearing, which includes a procedure conforming to the maxims of the law regarding same.

Due process of law requires that an interested party must be notified of the hearing by a method of process found in some statute authorizing same, and any proceeding based upon process unauthorized by any law, wherein a citizen is deprived of his property, results in such citizen being deprived of his property without due process of law as guaranteed to him under **P. 1 of the 14th Amendment to the Constitution of the United States.**

Inasmuch as the record clearly discloses the fact that these appellants, depositors in the defunct bank in question, were deprived of their property, both real and personal, in the amount of several hundred thousand dollars, including

stockholders liability, judgments, and the right to pursue same in satisfaction of their claims, and inasmuch as the record discloses that the notice given to these appellants of the hearing of this cause was upon process unauthorized by any statute existing in the State of Mississippi, we respectfully submit that such statute, as it provides for no notice whatever, violates **p. 1 of the 14th Amendment to the Constitution of the United States,** and as the Chancellor had no authority to formulate the scheme of process issued in question, all proceedings had thereunder are void and of no effect, and inasmuch as certain valuable property rights were destroyed and a considerable amount of property was taken from these appeallants under the decree and judgment of the courts below, such is tantamount to depriving these appellants of their property without due process of law in violation of **p. 1 of the 14th Amendment to the Constitution of the United States.**

J. J. Newman Lumber Company v. Pace, 137 Miss, 504.
Y. & M. V. R. R. Company v. Lawler, 130 Miss., 421.
Ponder v. Martin, 119 Miss., 156.
Burton v. Pepper, 116 Miss., 139.
Coe v. Armour Fertilizer Company, 237 U. S., 413.
Stuart v. Palmer, 74 N. Y., 183.
Paulsen v. Portland, 149 U. S., 38.
Bonslog v. City of Gulfport, 112 Miss., 184.
Dunn v. Love (dissenting opinion) 155 So., 335.

We, therefore, respectfully submit that the question that appellants were deprived of their property without due process of law in violation of **Paragraph 1 of the 14th Amendment to the Constitution of the United States** is material and substantial.

(c)

THE CLAIM OF APPELLANTS THAT CHAPTER 251 OF THE LAWS OF THE STATE OF MISSISSIPPI, 1932, AND THE JUDGMENT OF THE COURT BELOW DENIED THEM THE EQUAL PROTECTION OF THE LAWS IS MERITORIOUS, SUBSTANTIAL AND REAL.

A reference to Chapter 251 of the Laws of the State of Mississippi, 1932, at once discloses that certain depositors and common creditors of the defunct bank in question, are denied equal protection of the laws under same. The statute provides that correspondent banks, although general creditors, are to be paid in full, while depositors, also general creditors, are to be paid in such manner as seventy-five per cent of the depositors and creditors of such defunct banking institution, or depositors and creditors owning seventy-five per cent of the claims against said defunct banking institution, shall decide. This is clearly a discrimination based upon no classification whatever, whether reasonable or otherwise.

Correspondent banks and depositors are mere general creditors of insolvent banks, and there is no valid reason why one class of general creditors should be paid in full and another class only partially, especially where the partial payment is attempted to be forced upon general creditors not consenting thereto.

The decree and judgment of the court below is in a similar situation. A reference to the decree in question shows that creditors holding cashier's checks were ordered paid in full, although mere general creditors, and depositors whose accounts were under $5.00, were ordered paid in full, although mere general creditors, while all non-assenting depositors, whose accounts exceeded $5.00, are compelled to accept a cer-

tain per cent of their claim, part in cash and the balance in installments.

It appears to us that this denies to appellants the equal protection of the law, in violation of **p. 1 of the 14th Amendment to the Constitution of the United States.** It is well settled that equal protection of the laws requires equal operation of the laws upon all persons in like circumstances, and this requirement may be abridged by expressed statutory enactment or by improper execution through duly constituted agents, and where classification is attempted to justify a seeming discrimination, such classifcaton must be reasonable and bear a just relaton to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.

Maxwell v. Bugbee, 250 U. S., 525.
Buchanan v. Marley, 245 U. S., 60.
Sunday Lake Iron Company v. Wakefield, 247 U. S., 350.
Royster Guano Company v. Virginia, 253 U. S., 412.
G. C. & S. F. R. R. Company v. Ellis, 165 U. S., 150.

It is clear, therefore, that these appellants were denied the equal protection of the laws, both under the statute itself and the decree and judgment of the courts below. The common depositors and the common creditors are compelled by statute to accept whatever either three-fourths of the number of creditors agree for them to accept, or, in the alternative, whatever a lessor number having three-fourths of the credits involved, determine is best for them to take; whereas, the correspondent bank, although a simple creditor, and having a simple demand, not secured by collateral or pledges, is not compelled to accept such settlement.

The terms must be acceptable to such banks and they may

prevent, at their will, a scheme from becoming effectual until they have been paid in full, as seems to have been done in the present case. By the very terms of the act itself, it is not to apply to all persons in the same situation, but as to public depositors, or those depositors and creditors holding preferred claims or secured claims, or correspondent banks, although holding no preferred claims and no securities, the act shall not apply at all.

It favors a bank which is a common creditor, having checks and other obligations or collections with the bank, when it closes, guaranteeing to it favors at the expense of all others. To say the least, such question is a substantial, material, and real federal question, viewed in the light of the record before this court.

It seems to us that the violation of the constitutional provisions as set out above, on the facts as they exist in this case, is too clear for doubt. To say the least, such questions are material, substantial and real federal questions.

CONCLUSION

Inasmuch as this court, on a motion to dismiss, will not inquire into the merits of the cause (**Bohannon v. Nebraska, 118 U. S., 231**), but will only go so far as to determine for itself whether the federal questions presented are substantial, material and real, we respectfully submit that the motion to dismiss must be overruled as the record shows that the federal questions presented are material, substantial and real, and even though, if it were a case of moot, insubstantial or settled

federal questions, the ~~motive~~ motion would still be overruled, as there is no accompanying motion to affirm.

We respectfully submit that the motion to dismiss the appeal in question should be overruled.

Respectfuly submitted:

E. C. SHARP,

GEO. T. & CHAS. S. MITCHELL,

By_____

Attorneys For Appellants.

CERTIFICATE

I, Charles S. Mitchell, one of the attorneys for appellants, do hereby certify that I have served a true and correct copy of the above and foregoing brief upon C. R. Bolton, Tupelo, Mississippi, and Messrs. Creekmore and Creekmore, Jackson, Mississippi, and Flowers, Brown and Hester, Jackson, Mississippi, attorneys for appellees.

Witness my signature on this the_____ day of December, 1934.

_____

Attorney For Appellees.

CSM:k 12-14-34.

APPENDIX

(a)

Section 3817, Mississippi Code. Liquidation proceedings. —In liquidating the affairs of insolvent state banks taken over by him, the superintendent of banks shall proceed by first filing a petition in the chancery court of the county in which the bank is located, submitting the liquidation of such bank to the jurisdiction of that court and thereafter the liquidation shall proceed under the orders and directions of that court The chancery court or the chancellor in vacation shall have full jurisdiction to make any and all orders in the course of the liquidation proceedings. The case shall be styled "in the matter of the liquidation of the_____of the _____bank by_____superintendent of banks," and when the board of directors of the failed bank have passed a resolution, consenting to the liquidation of the bank, and requesting the superintendent of banks to take charge of its affairs for the purpose of such liquidation and authorizing an officer of the bank to waive service of process and enter the appearance of the bank to the petition, the superintendent of banks shall thereafter have full and complete control and authority over the assets and affairs of the failed bank, subject only to the orders of the chancery court to which jurisdiction of the liquidation has been submitted. Suit may be instituted by him in his name as superintendent of banks to enforce the collection of any bill or other obligation due the failed bank or to preserve the assets thereof or to enforce any right at law or in equity that might or could have been enforced by the bank as a going concern. And he may employ and retain such of the employees of the bank as he may deem necessary to aid him in the liquidation. By and with the con-

sent of the court or of the chancellor in vacation evidenced by an order in the liquidation proceedings he may sell any of the property, real, personal or mixed, belonging to the bank either at private or public sale, and a deed made by him under the seal and attested by the secretary of the state banking department shall convey to the purchaser all of the rights, title and interest of the bank and of the state banking department in any such property.

The superintendent shall cause notice to be given by advertisement in such newspaper as he may direct, once a week for six consecutive weeks, calling on all persons who may have claims against the bank (but not including deposits shown by the books of the bank which shall prima facie be proven claims) to present the same and make legal proof thereof, at a place and within a time specified in such notice, not less than ninety days from the date of the first publication of the notice. A copy of the notice shall be mailed to all persons whose names appear as creditors on the books of the bank. If the superintendent doubts the justice and validity of any claims or deposits, he may reject the same and serve notice of such rejection upon the claimant or depositor, either by mail or personally, and an affidavit of service of such notice, which shall be prima facie evidence thereof, shall be filed in the office of the banking department. An action upon a claim so rejected must be brought by petition to the chancery court having jurisdiction of the liquidation of the affairs of the bank by the claimant within six months after such service or the same shall be barred. Claims presented and allowed after the expiration of the time, fixed in the notice to creditors, shall be entitled to share in the distribution, only to the extent of the assets in the hands of the superintendent at the time claims are filed, without allowance for previous distribution. Upon taking possession of the property and assets of

a bank, the superintendent shall make an inventory of its assets in duplicate, one to be filed in the office of the banking department, and one in the liquidation proceedings in the chancery court. Upon expiration of the time fixed for the presentation of claims, the superintendent shall make in duplicate a full and complete list of the claims presented, including and specifying which claims have been rejected by him, one to be filed in the office of the banking department and one in the liquidation proceedings in the chancery court. Such inventory and list of claims shall be open at all reasonable times to inspection. The compensation of the special agents of the banking department, counsel and other employees and assistats and all expenses of supervision and liquidation shall be fixed by the superintendent subject to the approval of the chancery court, or the chancellor in vacation. When the compensation for the various parties aiding in the liquidation is fixed and approved the same shall be paid out of the funds of such bank in the hands of the superintendent and shall be a prior charge and lien on such assets. The money collected by the superintendent shall be, from time to time, deposited in one or more state depositories. At any time after the expiration of the date fixed for the presentation of claims, the superintendent may, out of the funds remaining in his hands, after the payment of expenses, declare and pay one or more dividends to creditors, and as soon as practicable thereafter, he shall declare and pay a final dividend, such dividend to be paid to such persons and in such amounts and upon such notice as may be directed by the chancery court having jurisdiction of the liquidation. Objections to any claims or deposits not rejected by the superintendent may be made by any party interested, by filing a copy of such objections with the superintendent, who shall present the same to the court having jurisdiction before the time of the next application to declare

a dividend. The court may make proper provisions for unproven or unclaimed deposits. When the superintendent shall have paid to each and every depositor and creditor of such bank whose claim or claims shall have been duly proven and allowed, the full amount thereof, and shall have made proper provision for unclaimed and unpadi deposits, or dividends, and shall have paid all the expenses of liquidation, all out of the assets of the failed bank, and there still remains in his hands any assets thereof, he shall call a meeting of the stockholders of such bank by giving thirty days' notice by publication once a week for three consecutive weeks in one or more newspapers published in the county where the principal office of such bank was located. At such meeting the stockholders shall elect by ballot an agent or agents who shall wind up the affairs of the bank, and in so determining such stockholders shall vote by ballot, in person or by proxy each share of stock entitling the holder to one vote and the majority vote of the stock shall be necessary to an election, a majority of the stock present and voting in person or by proxy being necessary Such agent or agents shall execute and file with the banking department a bond in such amount with such security and in such form as shall be approved by the superintendent of banks conditioned for the faithful performance of all the duties of all the duties of his or their trust, and so conditioned that any party aggrieved may bring or cause to be brought suit on said bond, and thereupon the superintendent shall transfer and deliver to such agent or agents all the undivided and uncollected or other assets of such corporation then remaining in his hands and take a receipt therefor by such agent or agents, and upon such transfer and delivery shall be discharged from any and all further liability to the bank and its creditors. Such agent or agents shall convert the assets coming into his or their possession into cash, and shall act for and make distribution of

the property of said bank as is herein provided in case of distribution by the banking department ,except that the expense thereof shall be subject to the direction and control of the court having jurisdiction of the cause. In case of the death, removal or refusal to act of any such agent or agents selected by the stockholders, the stockholders, on the same notice to be given by the superintendent upon proof of such death, removal or refusal to act, being filed with him, and by vote hereinbefore provided, may elect a successor who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected. Dividends and unclaimed deposits remaining unpaid in the hands of the banking departmet for six months after the order for final distribution (at such rate of interest as is allowed by said state depositories) shall be by him deposited in one or more state depositories to the credit of the banking department in trust for the several depositors in and creditors of the liquidated bank from which they were received, and the superintendent shall pay over the money so held by him to the persons respectively entitled thereto upon being furnished satisfactory evidence of their right to same. In case of doubtful or conflicting claims, he may require an order from the court having jurisdiction authorizing and directing the payment thereof. He may apply the interest earned by the money so held by him toward defraying the expense in the payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive the same. The banking department shall file annually with the governor of this state a report of the names of the banks taken possession of and liquidated and the sum of unclaimed and unpaid deposits or dividends with respect to each of them respectively, together with a statement of the amount of interest earned by such unclaimed dividends, which reports the governor must submit to the legislature.

In event the assets of the failed bank are not sufficient to pay the claims of all creditors and depositors in full, then in such event, when the superintendent shall have realized on all of the assets of such bank, and has applied the same toward the payment of such claims in the manner provided by law, he may file with the chancery court having jurisdiction of the liquidation a final report and upon the approval and allowance of this report he shall be discharged from any further liability to the bank and its creditors, except as to the right of depositors to be paid any remaining balance due them out of the guaranty fund as provided by law.

(b)

Section 3815, Mississippi Code. Stockholders—liability of.—The stockholders of every bank shall be individually liable, actually and ratably, and not for one another, for the benefit of the depositors in said bank to the amount of their stock at the par value thereof, in addition to said stock; but persons holding stock as executors, administrators, guardians, or trustees shall not be personally liable as stockholders, but the assets and funds in their hands constituting the trust shall be liable to the same extent as the testator, intestate, ward or person interested in such trust fund would be, if living or competent to act; and persons holding stock as collateral security shall not be personally liable as stockholders, but the person pledging such stock shall be deemed the stockholder and liable under this section. Such liability may be enforced in a suit at law or in equity by any such bank in process of liquidation, or by the superintendent of banks, or other officer succeeding to the legal rights of said bank.

Chapter 251, Laws of the State of Mississippi, 1932, is as follows:

(c)

Section 1. **Be it enacted by the Legislature of the State of Mississippi,** That the Superintendent of Banks of the State of Mississippi be authorized to reopen any closed bank, with the approval of the Chancery Court of the county in which the bank is situated, or of the Chancellor in vacation, when at least three-fourths of the general depositors and creditors therein, or any number of the general depositors and creditors therein provided they own at least three-fourths of the deposits in or claims against such bank, agree to the reopening thereof and sign what is commonly termed a "freezing-of-deposits agreement", under which they agree to accept repayment of their deposits and claims over a period of years, for the full amount thereof or in reduced amounts, with or without interest, the period over which the deposits and claims are to be repaid and the rate of payment, together with the interest rate, if any, to be determined by the Superintendent of Banks, provided the Superintendent of Banks is convinced that such bank is in solvent condition and can repay the depositors the amounts of their deposits in accorddance with the terms of the agreement for the repayment of same. But, before any such bank shall be reopened, the entire plan for the reopening of same, and all facts in connection therewith, shall be submitted by the Superintendent of Banks to the Chancery Court of the county in which the bank is situated, or to the Chancellor in vacation, by proper petition, duly verified, such petition to contain a statement of the assets and liabilities of the bank and such other information as may be necessary to convey to the court or Chancellor the true facts with reference to the condition of such bank, and a decree of the court or of the Chancellor in vacation obtained approving the plan agreed upon for the reopening of such bank and authorizing the same to be reopened.

Section 2. When any closed bank has been reopened as herein provided, the general depositors and creditors thereof who have not expressly agreed to accept the repayment of their deposits and claims in accordance with the freezing-of-deposits plan shall be bound to accept repayment of their deposits and claims on the same basis and at the same rate as those general depositors and creditors who have signed the freezing-of-deposits agreement, but this shall not apply to public depositors or to those depositors and creditors holding preferred claims, or secured claims, nor to correspondent banks holding bills payable of the closed bank. Proper provision must be made in the plan for the reopening of such bank to pay public depositors, depositors and creditors holding preferred claims and secured claims, and correspondent banks, on terms acceptable to them, but any arrangement so made shall not operate prejudically to the rights of the general depositors and creditors of the bank.

Section 3. That this Act shall not be construed to give the Superintendent of Banks the right to diminish the assets of a closed bank to the prejudice of the depositors and creditors thereof, and any assets that may be charged out as doubtful or as losses shall be held by the bank and collected for the benefit of its depositors and creditors, and all amounts so collected shall be held by the bank to be paid to them in accordance with the agreement for the repayment of their deposits and claims.

Section 4. That this act shall be in force from and after its passage.

Approved May 18, 1932.

(d)

Depositors Agreement, Peoples Bank & Trust Company, Tupelo, Mississippi:

I, or we_____being a depositor of the Peoples Bank & Trust Company, of Tupelo, Mississippi, in the hands of J. S. Love, Superintendent of Banks, in charge of the liquidation thereof, as follows:

(1) Savings Account $_____

(2) Checking Account $_____

Total $_____

In consideration of the reopening of said bank and the benefits to accrue to me, or us, by virtue thereof, hereby agree as follows:

1) That said bank may be reopened under and subject to such plans as may meet with the approval of J. S. Love, Superintendent of Banks, the Chancery Court of Lee County, or the Chancellor (in vacation) and the directors of the Peoples Bank & Trust Company.

(2) That I, or we, are to receive 25 per cent of such balance as follows:

(a) 5 per cent of the original amount (or 20 per cent of the depreciated amount) as of date of reopening.

(b) Balance to be paid in installments whenever collections have been made from the assets taken over from the closed bank shall equal 5 per cent of the present outstanding deposits. All deferred payments are to be without interest.

(3) That the remaining 75 per cent of my, or our, balance or credit is to be charged to my or our account, and set up in a special account to benefit from a trust fund hereinafter provided.

(4) That the Superintendent of Banks is to make an examination of the bank, and is to put into the reopened bank a sufficient amount of the assets of the bank now in liquidation to insure the collection therefrom of sufficient funds to pay to the depositors and creditors of the bank now in liquidation the 25 per cent of their deposits and claims, which are to be assumed as a liability by the reopened bank, and the remainder of the assets of the bank now in liquidation are to be charged out of the bank and carried into a special fund known as "Pool Assets," to be managed and collected by the reopened bank for my or our benefit and distributed pro rata, after a sufficient amount has been collected from the present assets of the bank to pay all depositors and creditors 25 per cent of their claims.

(5) That the said special fund designated as a pool and the assets from which it is derived is to be administered and distributed by the re-opened bank, under the jurisdiction of the Chancery Court of Lee County, Mississippi, as a trust fund, and subject to the supervision of the Superintendent of Banks, and the said re-opened bank is to receive for the handling and collection of same 10 per cent of the amount which it collects, plus any Attorney's fees and court costs incurred.

(6) It is further agreed that the Peoples Bank & Trust Company is to be re-opened with not less than $35,000.00 capital stock fully paid in cash, and in consideration of the benefits to accrue from the re-opening the undersigned, as a depoistor or creditor, does hereby agree that such of the stockholders in the Peoples Bank & Trust Company as shall pay in cash to provide the capital stock for the re-opened bank—50 per cent of the amount of their stock in the Peoples Bank & Trust Company at closing, shall be relieved and released from further liability to the depositors of the bank in liquida-

tion, but that such stockholders as do not pay 50 per cent of their stock into the capital of the re-opened bank shall remain liable for the full amount of their stock liability, and which shall become part of the assets known as the pool, to be administered as a trust herein above provided.

(7) Nothing in this agreement is to be constructed as relieving the stockholders in the re-opened bank from any liability under the law upon stockholders in anything that may occur in the operation of the re-opened bank.

(8) I hereby authorize the Superintendent of Banks of the State of Mississippi, with the approval of the Chancery Court of Lee County, to act for me in further consummating the re-opening of the Peoples Bank & Trust Company, and in making contracts with the re-opened bank in conformity with this agreement.

Witness my signature, on this the_____day of _____1933.

_____

Witness:

_____

To The Honorable Chancery Court of Lee County, Miss.
and

Honorable J. S. Love, Superintendent of Banks of the State of Mississippi.

The undersigned Depositor in the Peoples Bank and Trust Company of Tupelo, Mississippi hereby respectfully petition that said bank be reopened in accordance with the agreement which I have signed on the reverse hereof, which plan has been approved by the Depositors' Committee of said bank.

_____

14

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

MRS. OSCAR C. DOTY, ET AL.----------Appellants

VS. NO. 585

J. S. LOVE, SUPERINTENDENT OF BANKS,
ET AL, ----------Appellees

STATEMENT OF THE CASE, BRIEF AND ARGUMENT IN BEHALF OF APPELLANTS AND ANSWER TO MOTION TO DISMISS

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STATEMENT OF THE CASE

The above cause is before this court by virtue of an appeal from a judgment of the Supreme Court of the State of Mississippi, affirming a decree rendered in said cause by the Chancery Court of Lee County, Mississippi. The decision of the Supreme Court of the State of Mississippi in said cause is found reported in the case of **Dunn, et al, v. Love, et al, 155 So., 331,** to which reference is here made.

The appeal, as shown by the record, is taken under the provisions of **United States Code, Title 28, Section 344, Judicial Code, Section 237,** and amendments, the constitutional issues involved being raised and maintained at all stages in the court below, namely, that the statute in question, as construed by the Supreme Court of the State of Mississippi, and the judgment of said court impairs the

obligations of certain contracts; denies to appellants the equal protection of the laws, and deprives them of their property without due process of law in violation of **P. 1, Sec. 10, of the Constitution of the United States and P. 1 of the Fourteenth Amendment to the Constitution of the United States**; and the protection of said provisions of the United States Constitution was specifically invoked. (Rec. 129-132, 167-171).

The facts in the case are substantially as follows:

On December 24, 1930, the Peoples Bank and Trust Company of Tupelo, Mississippi became insolvent and was placed under the charge of the State Banking Department for liquidation, as provided by **Chapter 85 of the Code of 1930 of the State of Mississippi (See Appendix a, Original Brief)**, and remained in process of liquidation until the 15th day of May, 1933, when a petition to reopen the bank in question was filed in the Chancery Court of Lee County, Mississippi, under **Chapter 251 of the Laws of the State of Mississippi, 1932. (See Appendix b Original Brief)**,

The record shows that when the bank in question closed for liquidation on December 24, 1930, its assets and liabilities were $2,477,114.78, with a capital stock of $200,000.00, and a surplus of $75,000.00. (Exhibit I to Petition, Rec. 14).

The record shows that on May 1, 1933, the bank in question had assets of the stated value of $1,901,672.92 with a deposit liability in excess of $5.00, of $1,311,303.43, and a deposit liability under $5.00 of $3,649.87. (Exhibit III to

Petition, Rec. 17-18).

On the 18th day of May, 1932, the Legislature of the State of Mississippi enacted and passed **Chapter 251 of the Laws of the State of Mississippi, 1932**, which said statute has as its purpose the reopening of banks theretofore closed by reason of insolvency.

On the 15th day of May, 1933, J. S. Love, Superintendent of the State Banking Department, and certain members of a depositors' committee, acting under the authority of **Chapter 251 of the Laws of the State of Mississippi, 1932**, filed a petition in the Chancery Court of Lee County, Mississippi, requesting the court to enter a decree reopening the bank in question, and approve the plan submitted upon which the reopening of the bank in question was to be based. (Rec. 1-13).

The petition filed discloses an effort to comply with the formal requirements of **Chapter 251 of the Laws of the State of Mississippi, 1932**, in that, it states that (a) more than three-fourths of the general depositors and creditors of the Peoples Bank and Trust Company, or general depositors owning three-fourths of the claims against the said Peoples Bank and Trust Company, have signed what is commonly termed a "freezing of deposits agreement" (Rec. 15) under which said agreement the depositors signing agreed to accept repayment of their deposits and claims, over a period of years, the full amount thereof, or in reduced amounts, with or without interest, the period over which the deposits and claims are to be repaid and the rate of

payment, together with the interest rate, if any, to be determined by the Superintendent of Banks; that (b) the Superintendent of Banks is convinced that the bank is in a solvent condition and can repay the depositors in accordance with the terms of the agreement and the repayment of same; that (c) incorporated in said petition is the plan upon which the bank is to be reopened; and, finally, (d) attached to the petition is a statement of the assets and liabilities of the bank as of the date of reopening, as is required by **Chapter 251 of the Laws of the State of Mississippi, 1932, (Rec. 1-21).**

Upon the filing of the petition in question, and in accordance with a part of the prayer thereof, the Chancellor, in vacation, to wit, the 4th day of May, 1933, entered an order setting the cause for hearing in vacation on the 15th day of May, 1933, and ordered the clerk of the Chancery Court to issue process for all parties interested by publishing a general notice of said hearing in a weekly newspaper published in Lee County, Mississippi, commanding all the depositors, creditors, and other parties in interest to appear before the Chancellor in vacation at a designated place and time, to show cause, if any they could, why the prayer of the petition in said matter should not be granted, and further ordered the clerk of the Chancery Court to issue personal process on fifteen of the general depositors of said bank, to appear and answer the petition on the day and date designated, which said fifteen depositors were to be considered as a class, such service of process to bind all the depositors and creditors of said bank. Personal service

seems to have been obtained on three of the depositors, as shown by the record, the record further showing that some were non-resident corporations of the State of Mississippi (Rec. 22-24).

The appellants in this cause appeared on the day and date designated to answer the petition in question and filed elaborate objections to the granting of the prayer of said petition. In the objections filed, appellants challenged the validity of the entire proceedings, including the validity of **Chapter 251 of the Laws of the State of Mississippi of 1932**; the validity of the plan submitted upon which to base the reopening of the bank in question; the validity of the process issued and the validity of the procedure adopted as being obnoxious and repugnant to and in violation of certain of the provisions of the Constitution of the United States; in that, **Chapter 251 of the Laws of the State of Mississippi**, 1932; the plan submitted under which said bank was to be reopened; and, the entire procedure adopted and followed, impaired obligations of contracts theretofore existing between appellants and the defunct bank in question, in violation of **Section 10, P. 1 of the Constitution of the United States**; deprived appellants of their property without due process of law; and denied to appellants the equal protection of the laws, in violation of **P. 1 of the 14th Amendment to the Constitution of the United States** (Rec. 25-33, 35-44).

When the hearing of the cause, upon the petition filed by appellees, and the objections filed by appellants, was concluded, the Chancellor in the court below overruled the

objections of appellants and entered a decree authorizing the bank in question to reopen as a new bank, upon the plan or scheme as set forth in the decree (Rec. 44-64).

The decree entered in the cause is in substance as follows:

The bank in question, upon opening, was to charge itself with twenty-five per cent of the amount of deposits and claims due depositors and general creditors of the insolvent bank, as of the date of re-opening, to-wit, May 15, 1933, with the exception of those deposits and claims under $5.00. As to the balance of the seventy-five per cent of the deposits and claims due depositors and general creditors, such was to be charged out of the bank and the bank was to be released of any further liability for the payment of same, same to be charged only against what is denominated as "pool assets." (Rec. 44-64).

Upon the opening of the bank in question, said bank was to pay five per cent of the amount of the original deposits in the insolvent bank to the depositors thereof, the balance of the twenty per cent of same to be paid in succeeding installments of five per cent whenever collections from the assets carried into the new bank shall equal five per cent of the then outstanding claims and deposits against the new bank (Rec. 44-64), and as to all deposits and claims under five dollars, the new bank, upon opening, was to pay same in full (Rec. 44-64).

That assets of the insolvent bank of the value of $491,-708.45, of which amount $19,186.44 is represented by secur-

ed notes given on account of capital structure of the new bank, are to be set over to the new bank and carried on its books at a valuation of $216,892.08. The new bank is to collect out of said assets the sum of $216,892.08, and when such sum has been collected, the remainder of the assets are to be transferred to the pool, to be there held to pay the seventy-five per cent of the deposits and claims charged out of the bank. (Rec. 44-64).

That bonds carried at a value of $81,610.15 in the insolvent bank are to be set over into the reopened bank, after giving effect to capital structure, at a value of $50,000.00, out of which the new bank is to collect $50,000.00, and the balance remaining, after the collection of said $50,000.00, is to be transferred to the "pool assets." That overdrafts of the insolvent bank, in the amount of $4,101.94 are also to be set over to the new bank. That stocks and bonds of the insolvent bank of the value of $37,468.60, are to be set over the new bank, from which the sum of $7,500.00 is to be collected by the new bank, and the balance transferred to the "pool assets." That all furniture and fixtures of the insolvent Peoples Bank and Trust Company at Tupelo, Rienzi, and Nettleton, Mississippi, of the value of $20,000.00, shall be set over unto the new bank at a valuation of $5,000.00, the "pool assets" to receive all amounts over and above the sum of $5,000.00 that may be realized therefrom.

That real estate of the value of $375,723.86, after giving effect to capital structure, is to be set over unto the new bank at a valuation of $68,917.50. That the three bank

buildings owned by the bank in liquidation, of the value of $55,000.00, are to be set over unto the new bank at a valuation of $12,500.00, and all sums realized from same, over and above $12,500.00, are to be transferred to the "pool assets." That assets of the value of $1,065,613.00, belonging to the bank in liquidation, or the depositors and general creditors of same, are to be set over unto the new bank at a valuation of $394,880.12, out of which the new bank is to collect the sum of $295,994.02, which it shall retain for its own use (Rec. 44-64). That there is to be set over unto the new bank, all cash on hand belonging to the bank in liquidation as of date of May 1, 1933, to-wit: the sum of $102,302.98 (Rec. 44-64).

That the new bank is to receive all interest collected on the notes and bonds set over unto it until the full principal sum for which said notes and bonds were set over unto the new bank shall have been collected; all dividends and earnings from stocks and bonds until the new bank shall have realized the sum of $7,500.00 from the sale of same; and all rents, issues and earnings from all real estate set over unto the new bank, until the new bank shall have realized the sum of $68,917.50 from the sale of all, or any portion of said real estate, the new bank in return therefor to pay all taxes, insurance, and upkeep on same, all expenses expended in the preservation and upkeep of said property occasioned by acts beyond the control of the reopened bank shall be chargeable against the assets of the pool. (Rec. 44-64).

That in return for the setting over unto the new bank

in question the assets heretofore mentioned and other benefits, the new bank assumes a liability to the depositors and general creditors to the extent of tweny-five per cent of the principal amount due them by the bank in liquidation, to be paid at the rate of five per cent upon opening and the balance of twenty per cent in deferred installments, if and when collected as heretofore set forth in this statement. (Rec. 44-64).

That the new bank is to be released from the payment of, or any liability to pay, the seventy-five per cent balance due the depositors and general creditors on their claims, but such balance is to be paid from the "pool assets" to be collected and held in trust by the new bank and administered under the jurisdiction of the Chancery Court of Lee County, Mississippi, with J. S. Love in charge of same as "the agent of the court" there being no definite time stated as to when the collections from the "pool assets" shall be paid to the depositors and general creditors.

That the new bank is to receive as compensation for collecting and handling the "pool assets" in question, ten per cent of all amounts collected on same, except such sums as are collected by the sale of any of the real estate, stocks or bonds belonging to the pool. That the new bank is to be reimbursed for all attorney's fees and court costs expended in collecting the assets of the pool, and preserving same, and all expenses incurred in the protection and preservation of said assets. (Rec. 44-64).

That the new bank shall open with a capital stock of

not less than $35,000.00, fully paid in cash, and that all the stockholders of the former insolvent Peoples Bank and Trust Company, who shall pay into the new bank fifty per cent of their stock liability incurred by reason of the closing of the Peoples Bank and Trust Company shall be released of fifty per cent of their stock liability and from any further liability to the depositors and general creditors, as such stockholders of said insolvent banking institution, and that the sum of $10,000.00 theretofore paid to the bank in liquidation in excess of fifty per cent of the stock liability of the stockholders therein should be refunded such stockholders and that all judgments theretofore entered against said stockholders of said insolvent Peoples Bank and Trust Company by reason of their stock liability, should be cancelled, and that the original stock held and owned by the stockholders in the insolvent banking institution should be released to such stockholders and any and all securities as may have been taken from such stockholders to secure the payment of the statutory liability incurred by virtue of being stockholders in the insolvent banking institution should be delivered to such stockholders; and that all stock of said insolvent banking institution should be cancelled. (Rec. 44-64).

That additional assets should be set over unto the new bank to provide a surplus to the extent of $35,000.00 and reserve to the extent of $10,000.00, same to be repaid into the "pool" out of the earnings of the reopened bank, all earnings, after the payment of expenses to the amount of $7,500.00 per year, to be paid into the pool for the repay-

ment of said amounts so provided, without interest. (Rec. 44-64).

That upon complying with the provisions of the decree, the said Superintendent of Banks and the liquidating agent of the Peoples Bank and Trust Company, are discharged fully and finally in the liquidation of said defunct bank and each of them and their bondsmen are released from any and all liability on account thereof. (Rec. 44-64).

It is further adjudicated in the decree that the charter of incorporation of the Peoples Bank and Trust Company has been amended reducing the capital stock from $200,000.00 to $55,000.00; that the interest of all old stockholders of the Peoples Bank and Trust Company at the time it closed for liquidation has been consumed; that all stockholders in the Peoples Bank and Trust Company in liquidation have been called on for their statutory double liability as provided by law; that the old certificates of stock should be cancelled and surrendered to the proper officers of the corporation; that new certificates be issued to the stockholders in the new or reopened bank; and, that all old stockholders who have not provided the assets for new capital stock, shall have no interests in the assets of the new corporation.

It is further provided in the decree "that all expenses incurred in the liquidation of the Peoples Bank and Trust Company and in the reopening of said bank up to the date of reopening, shall be paid out of the assets taken into the pool, which expenses shall include the cost incurred in this

cause, and in any other legal proceedings had in the liquidation, and which expenses are to be a charge against the assets taken into the pool, and should the reopened bank pay any such expenses, it is authorized to be reimbursed therefor from the pool." (Rec. 44-64).

An appeal to the Supreme Court of the State of Mississippi from said decree was granted appellants in said cause.

Appellants perfected their appeal to the Supreme Court of the State of Mississippi in the method as required by law, and filed joint and separate assignments of error, the assignments of error setting forth that the decree of the court below, the plan set forth therein for the reorganization of the bank in question, the procedure followed, and the construction placed upon **Chapter 251 of the Laws of the State of Mississippi, 1932,** by the court violates **P. 1 of Section 10 of the Constitution of the United States and Section 1 of the 14th Amendment to the Constitution of the United States.** (Rec. 101-106).

On June 5, 1934, the Supreme Court of the State of Mississippi entered a judgment affirming the decree of the Chancery Court of Lee County, Mississippi, entered in said cause (Rec. 107), and said opinion clearly demonstrates the fact that all the constitutional questions and issues were passed upon by said court adversely to the claims of these appellants as to their rights under said provisions of the Constitution of the United States (See Record: Opinion of Supreme Court of State of Mississippi in Case of **Dunn vs. Love 155 So. 331**), said judgment being a final judgment of the highest court of the State of Mississippi and being the

court of last resort. (Rec. 108-129).

Appellants, in due time, and in the manner as directed by law, filed a suggestion of error permitted under the procedure of the State of Mississippi, and this suggestion of error, necessary to make the judgment of said court final, was overruled by the Supreme Court of the State of Mississippi at the September Term, 1934, of said court.

Appellants then, as required by the rules of this court, prayed for and obtained an appeal to the Supreme Court of the United States, and the Chief Justice of the Supreme Court of the State of Mississippi entered the proper order granting the appeal and bond having been filed and approved, as required, the proper citation for appellees to appear in this Court was issued. (Rec. 129-132).

The record shows that the procedure for obtaining said appeal was in compliance with the rules of this Court and of the statutes made governing such appeals.

The printed transcript of Record was received by the Clerk of Supreme Court of the United States from appellants on the 23rd day of February, 1935, and shows to have been filed December 19, 1934. On the 25th day of February, 1935, appellants were served with copy of motion to dismiss the appeal, which motion sets out that the Record was not filed with the Clerk of the Supreme Court of the United States within forty days of the granting of the appeal by the Chief Justice of the Supreme Court of Mississippi. In reply to that motion appellants file herewith copy of affidavit of the Clerk of the Supreme Court of

Mississippi showing that the transcript of Record was forwarded by him by air mail to the Clerk of the Supreme Court of the United States on the 12th day of December, 1934, and copy of a registry receipt showing that said transcript was received by the Clerk of the Supreme Court of the United States on the 13th day of December, 1934. And there is also attached to said affidavit copy of letter from the Clerk of the Supreme Court of the United States dated December 13, 1934, acknowledging receipt of transcript of Record in this cause, which affidavit together with exhibits thereto conclusively shows that said Record was filed with the Clerk of this Court within the forty days in strict accordance with **Rule 10** of this Court.

Said motion to dismiss also alleges non-compliance with **Rule 27** of this Court, which requires the filing of briefs by appellants at least three weeks before the case is called for hearing, but appellees overlook the fact that a brief was filed by appellants on or about the 16th day of December, 1934, as shown by brief on file in this cause: and inasmuch as the printed transcript of the Record was not received by appellants until the 21st day of February it is manifest that **Rule 27** of this Court could not have been complied with if appellants were required to file a brief in addition to the one filed on or about the 16th day of December, 1934. (See Exhibits A-B-C. Pg. 31).

BRIEF AND ARGUMENT

Appellants file this brief as a supplement to the original brief heretofore filed in this cause and refer the Court to said original brief which is asked to be taken and considered in connection with this brief.

Inasmuch as this Court under its rules will only consider the points heretofore presented in the statement filed by appellants setting forth the points upon which they would rely, we shall confine this brief and argument to same. The points upon which appellants have heretofore stated they will rely are dual and are as follows:

Appellants contend first that **Chapter 251 of the Laws of the State of Mississippi, 1932,** (Appendix c, original brief) as construed by the Supreme Court of the State of Mississippi in said cause is repugnant to, and in violation of, **Paragraph 1 of Section 10 of the Constitution of the United States;** in that, the construction placed upon said **Chapter 251 of the Laws of the State of Mississippi, 1932,** the decree rendered in said cause by the Chancery Court of Lee County, Mississippi, and the judgment of the Supreme Court of the State of Mississippi affirming said decree impair the obligations of the contracts theretofore existing between appellants and the insolvent bank in question; and, second, that **Chapter 251 of the Laws of the State of Mississippi, 1932,** the decree rendered in said cause by the Chancery Court of Lee County, Mississippi, and the judgment of the Supreme Court of the State of Mississippi affirming said decree deprive these appellants of their

property without due process of law and denies these appellants the equal protection of the laws in violation of **Paragraph 1 of the 14th Amendment to the Constitution of the United States.**

We shall present this brief and argument with the above outline in view and we shall necessarily present first the question of the impairment of the obligation of the contracts.

The record discloses that long prior to the closing of the bank in question by reason of insolvency, the appellants made their deposits therein, thereby bringing into existence the contracts in question and giving rise to the relation of debtor and creditor between themselves and the defunct bank in question. Appellants submit that they had vested rights under these contracts which could not be destroyed. Appellants contend that the statute in question, the decree of the Chancery Court of Lee County, Mississippi, and the judgment of the Supreme Court of the State of Mississippi affirming said decree not only impaired the obligations of the contracts in question but absolutely destroyed same. The record shows that the bank in question had a capital stock of $200,000.00 and other assets consisting of money, securities and property and appellants submit that they had a right to look to these assets for the payment of their claims and when the procedure in question released the stockholders of any or all liability to the creditors of said corporation this amounted to impairing the obligation of these contracts in violation of **Paragraph 1 of Section 10 of the Federal Constitution.**

It is well settled that the relation of stockholders to the creditors of a corporation is contractual and that such contracts cannot be destroyed, their value lessened or modified by legislation and that such contracts come under the protection of the Federal Constitution.

Michie Banks & Banking V 1 p 163
7 R C L No. 277 Banks & Banking
14 Corpus Juris 507
Williams vs. Cobb 242 U S 307.

It is, therefore, the contention of appellants that when the stockholders were relieved of their liability to the appellants by the decree in question, appellants being creditors of the corporation, the provision of the Federal Constitution prohibiting impairment of contract obligations was violated.

Appellants further contend that they had a right to enforce their claims against the insolvent corporation in the manner provided by the laws in existence at the time of the making of the contracts in question. It will be remembered that at the time the contracts in question were entered into the laws of the State of Mississippi provided a full and complete scheme for the liquidation of insolvent banks and such laws regarding such liquidation provided a method for payment of the claims of an insolvent bank. Appellants contend they had a vested right in the remedies then provided and that such remedies could not be destroyed without impairing the obligations of

the contracts existing between appellants and the bank in question.

It is well settled that all laws which exist at the time and place of the making of a contract and where it is to be performed enter into and form a part of it. This embraces those laws which affect its validity, construction, discharge and enforcement.

Walker vs. Whitehead 16 Wallace 314.

It is further well settled that the obligation of a contract is the law that binds the parties to perform same.

Sturgis vs. Crowninshield 4 Wheatley 197

It is further well settled that any law which releases any part of the obligation of a contract, abridges same, or dispenses with expressed conditions therein impairs the obligation of same.

Green vs. Biddle 8 Wheatley 84

It is further well settled that the amount of the impairment of the obligation is immaterial. If there be any, it is sufficient to bring into activity the constitutional provisions and the judicial power of the Court to redress the wrong.

Farrington vs. Tennessee 95 U S 683.

It is further well settled by the authorities that the remedies provided for the enforcement of contracts in existence at the time of the execution of same enter into and form a part of its obligation and any law of the state,

or judicial action that lessens, or materially alters same, impairs the obligation of the contract and is void.

McCracken vs. Hayward 2 U S 1
Bronson vs. Kinzie 1 Howard 311

It is further well settled that impairment of the obligation of a contract by judicial decision falls within the constitutional prohibition.

Swift vs. McPherson 232 U S 51

Ohio Life Insurance Company vs. Deboldt 16 How 432.

It is the contention of appellants, therefore, that when these stockholders were released of their liability to the creditors of the banking corporation and when all rights of these appellants to protect their claims were destroyed and all remedies for the enforcement of same were taken away, such constitutes an impairment of the obligation of the contracts in violation of **P. 1 Sec. 10 of the Constitution of the United States** and for such reason appellants respectfully submit that the case should be reversed and the petition dismissed.

Appellants next contend that they were deprived of their property without due process of law in violation of the **14th Amendment to the Federal Constitution.**

The record discloses that the process issued in this case was issued under order of the Chancellor, commanding all interested persons to appear in vacation on a day certain to show cause, if any, they could, why the prayer of the petition filed in the case should not be granted. A general notice of such hearing was ordered published in a weekly

newspaper published in Lee County, and personal summons was ordered to be issued upon fifteen interested creditors of the insolvent bank in question, who should be considered as a class.

There is no statute of Mississippi authorizing a Chancellor to formulate an independent scheme of notice, or process. **Chapter 58 of the Code of the State of Mississippi, 1930**, is the process statute, and provides for summons and publication in various cases. **Section 2965 of the Code** provides that a summons shall not issue in any case, at law or in chancery, until the declaration, bill, petition, or other pleading beginning the cause, shall be filed. The process to bring in defendants at law and in chancery, shall be a summons and it shall command the officer to summon the defendant to appear and answer on the return day. **Section 2969** provides for summons in cases in chancery to be made returnable on a rule day in vacation, sufficiently distant in time to admit of due service thereof, or on the first day of the next regular term, etc. **Section 2972** provides for a summons by publication in a proceeding in the Chancery Court, where it is shown by affidavit filed, that a defendant is a non-resident of the state, or not to be found therein, and in such case the clerk shall promptly prepare and publish a summons to such party to appear and defend the suit on a rule day in vacation, or on the first day of the next regular term, if thereby the answer of the defendant would be the earlier required. **Section 2973 of the Code of the State of Missis-**

sippi of 1930, provides how unknown and non-resident defendants may be brought into Court. **Section 143 of the Laws of the State of Mississippi, 1932,** relates to the setting of causes in chancery for hearing in vacation, and the summons required to be issued to give notice to interested parties of such hearing.

A careful reading of the whole statute on process will show that the publication here made was not authorized by any statute of the State of Mississippi. It is necessary for a statute to prescribe how such process shall issue and this must be found in the law itself. **Chapter 251 of the Laws of the State of Mississippi, 1932,** does not provide anywhere for the giving of notice to the depositors and creditors; for the issuance of summons; or for the issuance of any process. Therefore, it is clear that there was no statute of the State of Mississippi in force and effect authorizing the scheme of process as formulated by the Chancellor in this cause. A Chancellor cannot take the place of the Legislature; such authority cannot be delegated and there has been no attempt to delegate it in the manner in which it is attempted to be exercised in this case.

Pennoyer v. Neff, 95 U. S. 714.

It is well settled by the authorities that due process of law means that a citizen must be accorded a hearing in a legal manner, according to the principles of jurisprudence in force and effect relating to the hearing, which includes a procedure conforming to the maxims of the law regarding same.

Due process of law requires that an interested party must be notified of the hearing by a method of process found in some statute authorizing same, and any proceeding based upon process unauthorized by any law, wherein a citizen is deprived of his property, results in such citizen being deprived of his property without due process of law as guaranteed to him under **P. 1 of the 14th Amendment to the Constitution of the United States.**

Inasmuch as the record clearly discloses the fact that these appellants, depositors in the defunct bank in question, were deprived of their property, both real and personal, in the amount of several hundred thousand dollars, including stockholders liability, judgments, and the right to pursue same in satisfaction of their claims, and inasmuch as the record discloses that the notice given to these appellants of the hearing of this cause was upon process unauthorized by any statute existing in the State of Mississippi, we respectfully submit that such statute, as it provides for no notice whatever, violates **P. 1 of the 14th Amendment to the Constitution of the United States,** and as the Chancellor had no authority to formulate the scheme of process issued in question, all proceedings had thereunder are void and of no effect, and inasmuch as certain valuable property rights were destroyed and a considerable amount of property was taken from these appellants under the decree and judgment of the courts below, such is tantamount to depriving these appellants of their property without due process of law in violation of **P. 1 of the 14th Amendment to the Constitution of the United States.**

J. J. Newman Lumber Company v. Pace, 137, Miss. 504.
Y. & M. V. R. R. Company v. Lawler, 130 Miss. 421.
Ponder v. Martin, 119 Miss. 156.
Burton v. Pepper, 116 Miss. 139.
Coe v. Armour Fertilizer Company, 237 U. S. 413.
Stuart v. Palmer, 74 N. Y. 183.
Paulsen v. Portland, 149 U. S. 38.
Bonslog v. City of Gulfport, 112 Miss. 184.
Dunn v. Love (dissenting opinion) 155 So. 335.

Appellants, therefore, respectfully submit that the cause should be reversed and the petition dismissed for the reason that the procedure followed and the law involved **(Chapter 251 of the Laws of the State of Mississippi, 1932)** deprived them of their property without due process of law in violation of **P. 1 of the 14th Amendment to the Constitution of the United States.**

Appellants further contend that **Chapter 251 of the Laws of the State of Mississippi, 1932,** and the judgment of the Court below denied them the equal protection of the law in violation of **P. 1 of the 14th Amendment to the Constitution of the United States.**

A reference to **Chapter 251 of the Laws of the State of Mississippi, 1932,** at once discloses that certain depositors and common creditors of the defunct bank in question, are denied equal protection of the laws under same. The statute provides that correspondent banks, although general creditors, are to be paid in full, while depositors, also general creditors, are to be paid in such manner as seventy-five

per cent of the depositors and creditors of such defunct banking institution, or depositors and creditors owning seventy-five per cent of the claims against said defunct banking institution, shall decide. This is clearly a discrimination based upon no classification whatever, whether reasonable or otherwise.

The decree and judgment of the Court below is in a similar situation. A reference to the decree in question shows that creditors holding cashier's checks were ordered paid in full, although mere general creditors, and depositors whose accounts were under $5.00 were ordered paid in full, although mere general creditors, while all non-assenting depositors, whose accounts exceeded $5.00, are compelled to accept a certain per cent of their claim, part in cash and the balance in installments.

It appears to us that this denies to appellants the equal protection of the law, in violation of **P: 1 of the 14th Amendment to the Constitution of the United States.** It is well settled that equal protection of the laws requires equal operation of the laws upon all persons in like circumstances, and this requirement may be abridged by expressed statutory enactment or by improper execution through duly constituted agents, and where classification is attempted to justify a seeming discrimination, such classification must be reasonable and bear a just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.

Maxwell v. Bugbee, 250 U. S. 525.

Buchanan v. Marley, 245 U. S. 60.
Sunday Lake Iron Company v. Wakefield, 247 U. S. 350.
Royster Guano Company v. Virginia, 253 U. S. 412.
G. C. & S. F. R. R. Company v. Ellis, 165 U. S. 150.

It is clear, therefore, that these appellants were denied the equal protection of the laws, both under the statute itself and the decree and judgment of the Courts below. The common depositors and the common creditors are compelled by statute to accept whatever either three-fourths of the number of creditors agree for them to accept, or, in the alternative, whatever a lesser number having three-fourths of the credits involved, determine is best for them to take; whereas, the correspondent bank, although a simple creditor, and having a simple demand, not secured by collateral or pledges, is not compelled to accept such settlement.

The terms must be acceptable to such banks and they may prevent, at their will, a scheme from becoming effectual until they have been paid in full, as seems to have been done in the present case. By the very terms of the act itself, it is not to apply to all persons in the same situation, but as to public depositors, or those depositors and creditors holding preferred claims or secured claims, or correspondent banks, although holding no preferred claims and no securities, the act shall not apply at all.

It favors a bank which is a common creditor, having checks and other obligations or collections with the bank, when it closes, guaranteeing to it favors at the expense of

all others. To say the least, such question is a substantial, material, and real federal question, viewed in the light of the record before this Court.

It seems to us that the violation of the constitutional provisions as set out above, on the facts as they exist in this case, is too clear for doubt and appellants respectfully submit that the case should be reversed and the case dismissed, in that, the act itself **(Chapter 251 of the Laws of the State of Mississippi, 1932)**, and especially as applied in this case deny to these appellants the equal protection of the laws in violation of **P. 1 of the 14th Amendment to the Constitution of the United States.**

At the request of appellants the petitioners were requested to give an appraisal of the real estate, loans and discounts and other assets belonging to the bank in liquidation and the reply to that demand is shown by the record, pages 65, 66, and 67.

On page 66 of the record the following statement is made as to the appraisals of loans and discounts:

"It is impossible on so short a notice to give an itemized appraisal of all loans and discounts and other assets of the Peoples Bank and Trust Company in liquidation, but the valuation of these various items of assets in the Exhibit 5 to the reopening Petition are very conservative."

Pages 133 to 166 inclusive recited a list of notes, description of real and personal property and other assets but give no valuation thereof other than the values at

which they were carried on the books of the defunct bank.

It will be noticed from this list that the real estate is in many counties of the state.

The Superintendent of Banks and liquidating agent had been in possession and had control of these assets for more than two years and if they were unable to give an appraisal thereof it is manifest that the creditors could not. And the Court was in no position and had no adequate data upon which to base its findings.

As said in **National Surety Company vs. Coreill, 289 United States 462, 77 L. Ed. 1300:**

"The non-assenting creditors were entitled to have the plan and their objections considered in an orderly way, and to a decree based upon adequate data.

"For the proper disposition of these questions definite, detailed and authentic information was essential. * * *

"There was no valuation of the assets by a disinterested appraiser. * * *

"Every important determination by the Court in receivership proceedings calls for an informed independent judgment. In the case at bar special reasons existed why the Court should have secured adequate, trustworthy information. The proceeding was not an adversary one; and jurisdiction rested wholly upon the consent of the different corporations."

It appears to us that the proceedings in the case at bar are in direct conflict with the requirements announced

by this Court in the Coreill Case supra.

There are other similarities between the case at bar and the Coreill Case which we will not attempt to specifically call the Court's attention to herein.

CONCLUSION

Appellants reiterate former contentions that this Court should reverse this case and dismiss the petition for the reason that the application of the statute involved, the judgment of the Supreme Court of the State of Mississippi and the procedure followed respectively violate **Section 10 and the 14th Amendment of the Federal Constitution** as heretofore pointed out.

Appellees will probably cite the Minnesota Moratorium Case **(Home Building and Loan Association vs. Blaisdell, Supreme Court Reporter, Volumn 54, No. 5 page 231).** A close analysis discloses at once the difference between it and the instant case. The remedy in the Blaisdell Case was not impaired or destroyed. The creditor in that case retained his remedy and all the rights of the creditor were preserved. The creditor was only postponed in the enforcement of his remedy being the recipient of a reasonable consideration from the debtor by virtue of the postponement.

Counsel for appellee will probably cite the Kentucky case of **Milner et al vs. Gibson et al, 61 S. W. (2 d.) 273.** A close analysis of this case shows at once a dis-

tinction between it and the case at bar. In the Milner case all remedies and rights of the depositors were preserved. It is true that the depositors were held to be bound by the reopening statute, but it is also true that the bank as reopened became liable to the depositors for the full amount of the claims and the depositors were further entitled to enforce their claims against the bank and the stockholders liability for payment of these claims, and the payment of all depositors in full where ordered and fixed at a definite and specified time. It is seen that neither the rights of the depositors in that case nor the remedies open to them for the enforcement of their rights were either impaired or destroyed.

It does not take a technician to note the difference between these cases and the case at bar. A mere reading of the record shows that all remedies open to these appellants and the enforcement of their claims were impaired and destroyed by the insolvent banking institution. Its stockholders, its officers and directors, were absolutely released of any further liability to them for the payment of said claims with the exception of twenty-five per cent of the original amount of their claims, if, and when collected. Thus it is clearly seen that there is involved in this case destruction of remedies, annihilation of contractual obligations and the destruction of vested rights.

Counsel for appellee will probably further argue that a complete answer to the contention of appellants is the reserved power of the State commonly known as the police power. However, this Court has answered such contention adversely.

In the case of Gunn v. Barry, 15 Wallace 610, this Court said, in holding void a state statute which so enlarged exemptions as to deprive an antecedent judgment creditor, of his judgment lien:

"No one can cast his eyes over the former and latter exemptions without being struck by the greatly increased magnitude of the latter. The effect of the act in question, under the circumstances of this judgment, does not indeed merely impair; it annihilates the remedy. There is none left. But the act reaches still further. It withdraws the land from the lien of the judgment, and this destroys a vested right of property which the creditor had acquired in the pursuit of the remedy to which he was entitled by the law as it stood when the judgment was recovered. It is, in effect, taking one person's property and giving it to another without compensation. This is contrary to reason and justice, and to the fundamental principles of the social compact. The legal remedies for the enforcement of a contract, which belong to it at the time and place where it is made, are a part of its obligation. A state may change them: provided the change involves no impairment of a substantial right. If the provision of the Constitution or the legislative act of a state, fall within the category last mentioned, they are to that extent utterly void. They are, for all the purposes of the contract which they impair, as if they had never existed. The jurisdictional prohibition which they contain with respect to the courts of the state, can, therefore, form no impediment to the plaintiff in error in the enforcement of his rights touching this judgment, as those rights are recognized by this Court."

This Court has further held in the case of **Terry vs. Anderson, 5 Otto 628:** "In all cases of alteration of remedies, the question is one of reasonableness."

In the case of **Memphis vs. United States, 7 Otto 293,** this Court has established the rule that a creditor by contract has a vested right to the remedies for the recovery of the debt which existed at law when the contract was made, and the Legislature of a state cannot take them away without impairing the obligation of contract, though it may modify them, and even substitute others, if a sufficient remedy be left, or another sufficient one be provided. The law is, in effect, a part of the contract.

As said in **Six Ruling Case Law 195:**

"While there are no precise limits to the police power, it is not, however, without its limitations, since it may not unreasonably invade private rights or violate the rights which are guaranteed under either Federal or State Constitutions."

In **Phipps vs. Chicago, 171 N. E. 289** the Court said:

"The Legislature may not, under the guise of protecting the people's interest arbitrarily interfere with private rights. An act which deprives a citizen of his liberty or property cannot be sustained under the police power unless due regard for the public welfare, health, comfort, and safety requires it."

In the present case the only testimony in regard to

the public welfare introduced is shown in record page 89 in the testimony of the liquidating agent as follows: "The reopening of the bank, I do not think would have anything to do with the general conditions of the country, but I think it would have a marked effect on the local condition. It is generally recognized that a debtor to a closed or a bankrupt institution, does not have near the regard for its obligations as if he owes it to an open and going institution."

Certainly this does not justify the invoking of the police power as a justification for the decree rendered in this cause. We are unaware of any decision of this Court, or any other Court, permitting the police power to be invoked against a citizen with reference to contract rights. Practically all the decisions of which we are aware involve the police power with reference to the regulations of corporation and not to the rights and vested interests of private citizens.

Appellants, therefore, respectfully submit that **Chapter 251 of the Laws of the State of Mississippi, 1932**, the decree of the Chancery Court of Lee County, Mississippi, and the judgment of the Supreme Court of the State of Mississippi violate **P. 1 of Section 10 of the Constitution of the United States** as heretofore set forth and for such reasons appellants respectfully submit that the cause should be reversed and the petition dismissed.

Respectfully submitted,

E. C. SHARP,

GEO. T. & CHAS. S. MITCHELL

I, Chas. S. Mitchell, of counsel for appellants hereby certify that I have this day delivered to C. R. Bolton a true and exact copy of this brief and have mailed to Creekmore & Creekmore and Flowers, Brown and Hester, of counsel for appellees, Jackson, Mississippi, copies of this brief.

This the 2nd day of March, 1935.

CHAS. S. MITCHELL.

EXHIBIT "A"

STATE OF MISSISSIPPI
HINDS COUNTY

Personally appeared before me, the undersigned authority authorized to administer oaths, Tom Q. Ellis, Clerk of the Supreme Court of the State of Mississippi, who makes affidavit that on the 12th day of December, 1934, he sent by registered airmail, return receipt requested, the transcript of record in the case of **Mrs. Birdie Lowry Dunn, et al, vs. J. S. Love, Superintendent of Banks,** which said cause was appealed from the Supreme Court of the State of Mississippi to the Supreme Court of the United States. That said record was addressed to the Clerk of the Supreme Court of the United States, and affiant herewith attaches to this affidavit return receipt for said transcript, signed "C. E. Cropley, by W. C. Syphax," showing delivery of said transcript on the 13th day of December, 1934, and attaches hereto a letter dated December 13, 1934, signed "Charles Elmore Cropley, Clerk, by E. P. Culliman, Assistant," acknowledging receipt of said transcript.

This affidavit is furnished at the request of attorneys for appellant in the above styled cause, to be used to refute the motion to dismiss filed in said cause showing that said record was not filed within 40 days, or before the 15th day of December, 1934.

TOM Q. ELLIS,
Clerk of the Supreme Court

of the State of Mississippi.

Sworn to and subscribed before me, this the 25th day of February, 1935.

(SEAL) WALKER WOOD,

Secretary of State of Mississippi.

EXHIBIT "B"

Penalty for private use to avoid payment of postage, $300
Postmark of delivering office. Mail early for Christmas.
Cancellation Stamp—Washington, D. C., Dec. 13, 1934

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

REGISTERED ARTICLE NO. 6798 Insured Parcel No.----------

Return to Tom Q. Ellis, Clerk. (Name of sender).
Street and number, or Post Office Box:
Supreme Court of Miss.
Post Office at Jackson, Mississippi.
Rev. 3-24 c5—6116 State----------:

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

C. E. CROPLEY (Signature or name of addressee)
W. C. SYPHAX (Signature of addressee's agent)
Date of delivery Dec. 13, 1934
Form 3811 U. S. Government Printing Office c5—6116

EXHIBIT "C"

OFFICE OF THE CLERK,
SUPREME COURT OF THE UNITED STATES,
WASHINGTON, D. C.

December 13, 1934.

Tom Q. Ellis, Esq.,
Jackson, Miss.
Dear Sir:

I have your letter of the 12th instant, enclosing transcript of record in the case of **Mrs. Birdie Lowery Dunn, et. al. v. J. S. Love, Superintendent etc.** It would be greatly appreciated by this office if in forwarding records you would in some way bind the pages together.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk.
By E. P. CULLIMAN, Assistant.

EPC-W.

15

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 585

MRS. OSCAR C. DOTY, ET AL.,

Appellants,

vs.

J. S. LOVE, SUPERINTENDENT OF BANKS OF THE STATE OF MISSISSIPPI.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

H. H. CREEKMORE,
C. L. HESTER,
C. R. BOLTON,
Counsel for Appellee.

INDEX.

Subject Index.

	Page
Statement opposing jurisdiction	1
Motion to dismiss	12
Appendix "A" (Section 3817, Mississippi Code of 1930)	15
Appendix "B"	19

Table of Cases Cited.

Able State Bank v. Bryan, 282 U. S. 765 L. Ed. 690	14
American Railway Express Company v. Commonwealth of Kentucky, 273 U. S. 269, 71 L. Ed. 639	13
Bank of Oxford v. Love, 111 Miss. 699, 40 Sup. Ct. Rep. 22, 250 U. S. 603, 63 L. Ed. 1165	14
Berlison v. Commercial Cable Company, 250 U. S. 360, 63 L. Ed. 103	13
Braxton County Court v. West Virginia, 208 U. S. 192, 52 L. Ed. 450.	12
Chicago & A. R. Co. v. Tranbarger, 238 U. S. 67, 59 L. Ed. 1204	11
Christensen v. Merchants and Marine Bank of Pascagoula, Miss., 150 So. 375	3, 10, 11
East v. Van Deman and L. Company, 240 U. S. 342, 60 L. Ed. 679	11
Home Building Association v. Blaisdell, 290 U. S. 398, 78 L. Ed. 413, 54 Sup. Ct. Rep. 231	13
Love v. Mangum, 160 Miss. 590	14
Meningault v. Springs, 199 U. S. 473, 50 L. Ed. 274	11
Noble State Bank v. Haskell, 219 U. S. 102, 55 L. Ed. 112	11, 13
Puget Sound Power Company v. King County, 264 U. S. 22, 68 L. Ed. 541	12
Shaffer v. Howard, 249 U. S. 200, 63 L. Ed. 559	13
St. Louis Poster Adv. Co. v. St. Louis, 249 U. S. 269, 63 L. Ed. 599	11
Union Drygoods Company v. Georgia Public Service Corporation, 248 U. S. 372, 63 L. Ed. 309	11

Statutes Cited.

Laws of Mississippi of 1932, Chapter 251	4, 9, 11, 12
Mississippi Code of 1930, Section 3817	2, 10, 15

SUPREME COURT OF THE UNITED STATES

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No. 585

MRS. OSCAR C. DOTY, ET AL.,

Appellants,

vs.

J. S. LOVE, SUPERINTENDENT OF BANKS OF THE STATE OF MISSISSIPPI.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

STATEMENT OF GROUNDS AND MATTER MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES, AND MOTION TO DISMISS THE APPEAL HEREIN.

Appellee submits, in compliance with paragraph 3 of Rule 12, Revised Rules of the Supreme Court of the United States, as amended May 31, 1932, the following statement of grounds making against the jurisdiction of this Court asserted by the appellants in this cause.

1*f*

(1)

Mrs. Lorene Roberts Tolman, referred to in appellant's statement of facts showing jurisdiction, is not now, and has never been a party to this litigation, filed no pleading in the cause, and no question, Federal or otherwise, has been raised in her behalf prior to filing of statement of facts showing jurisdiction.

(2)

When the proceeding was instituted in the Chancery Court of Lee County, Mississippi, which culminated in the decree of the Supreme Court of Mississippi, appealed from herein, the Peoples Bank & Trust Company owed no debts to correspondent banks. (Record, page 204, and also opinion of Supreme Court of Mississippi.)

(3)

The plan of dealing with stockholders' liability is more advantageous to appellants than ordinary liquidation would have been. (Record, page 252-254, and Opinion of the Supreme Court of Mississippi.)

(4)

Appellants consented to hearing in vacation (Record, pages 179-180).

At the time the Peoples Bank & Trust Company, of Tupelo, Mississippi, was closed for liquidation on December 24, 1930, proceedings thereon were had under Section 3817, of the Mississippi Code of 1930, which section was originally enacted by the Legislature of 1914 and had continued in force up until that time. This Section 3817 is quite a lengthy statute, and for that reason a copy thereof is attached hereto as "Appendix 'A'" instead of being

copied into this statement. This statute provides an elaborate scheme for the liquidation of insolvent State banks, and that the same shall proceed under the jurisdiction of the Chancery Court of the County in which the insolvent bank is domiciled, the Superintendent of Banks being the statutory liquidator and subject to the jurisdiction of said Chancery Court. The proceeding is in reality a receivership with the Superintendent of Banks named as the statutory receiver. The statute is very broad in its scope and among other things provides:

> "The Chancery Court or the Chancellor in vacation shall have full jurisdiction to make any and all orders in the course of liquidation proceedings."

This statute, as construed by the Supreme Court of the State of Mississippi, has been held to be remedial in its nature and object and should receive a liberal construction. *Christensen* v. *Merchants and Marine Bank of Pascagoula, Miss.*, 150 So. 375.

Under the existing law, the creditors of an insolvent bank were limited in their recovery to the amount that might be realized out of the liquidation proceedings as provided by said Section 3817, except originally the right to be paid any remaining balance out of the guaranty fund as provided by law. This guaranty fund was abolished prior to the closing of the Peoples Bank & Trust Company, and, therefore, had no bearing on the matters affected by the liquidation of said bank.

When the bank closed for liquidation, it was largely indebted for bills payable and for public moneys, which were preferred claims under the laws of the State of Mississippi, and the greater part of its best assets was pledged as collateral to secure the payment of the said bills payable. After a lapse of more than two years, these bills payable had been paid off and such of the assets as were pledged as collateral and had not been collected and consumed in the

payment of said bills payable were again free assets of the bank. In May, 1933, the Superintendent of Banks of the State of Mississippi, who was in charge of the liquidation of the bank, filed a petition in the Chancery Court of Lee County, Mississippi, under the jurisdiction of which said bank was being liquidated, in which petition it was sought to reopen the bank. This petition was filed not only under the provisions of Chapter 251 of the Laws of Mississippi of 1932, as alleged in the Statement of Facts by Appellant, but it was made a further ground of the petition that not only had the plan for the reopening of the bank been approved by more than three-fourths of the creditors of said bank, but further that the plan for the reopening of the bank was to the best interest of the depositors and creditors of said bank, and that more would be realized thereby than would be realized by them from a continuation of the bank in liquidation. That the assets of the bank which were more readily collected had been collected and if the liquidation continued the relative cost of collection would be increased without compensating benefits which would accrue through the handling of the same by an open bank. That the liquidation was a virtual receivership, and that the assets of said bank were being administered by the Chancery Court of Lee County, Mississippi, for the benefit of all depositors and creditors and their interest in said assets was subject to the action of said court, and the only resource to which depositors and creditors might look for the collection of their deposits and claims, all of which were then under the jurisdiction of said court. The petition further alleged that the interest of all depositors and creditors would be best promoted by the reopening of the bank according to the plan set out in the petition and offered to make proof thereof, and prayed that the court acting for all the creditors would authorize the reopening of the bank

as it had power to do by jurisdiction over it in Receivership, and furthermore, the petition concluded with the prayer for such general relief as to the court might seem right and proper (R. 17). It might be stated at this time that such proof was offered in behalf of said petition, and although the appellants were present at the hearing and given an opportunity to offer proof to the contrary, offered none, and the court found from the proof that the best interest of all the creditors would be best promoted by the reopening of the bank, and entered a decree therefor with elaborate provisions for the protection of all the interests of the creditors. This finding of fact by the lower court that the interest of all the creditors would be best promoted by this plan was affirmed by the Supreme Court of Mississippi which also adjudged this to be a fact from the record.

There was attached as an exhibit to the petition a Depositor's Agreement which was signed by more than 75% of the depositors of said bank praying for the reopening of the bank. In the Statement of Facts purporting to show jurisdiction, appellants have omitted certain pertinent parts of this Depositor's Agreement which refute much of their complaint with reference to this procedure. These omitted parts were express authority for the action taken in the reopening of the bank. Not only does the Depositor's Agreement set out the parts quoted by the appellants, but further, after stating that the signer is a depositor for a designated amount, recites:

> "In consideration of the reopening of said bank the benefits to accrue to me, or to us, by virtue thereof, hereby agree as follows:
>
> (1) That said bank may be reopened under and subject to such plans as may meet with the approval of J. S. Love, Superintendent of Banks, the Chancery Court of Lee County, or the Chancellor (in vacation),

and the Directors of the Peoples Bank & Trust Company.

(2) That I, or we, are to receive 25% of such balance as follows:"

Then it recites the portion of the agreement set out in appellants' statement. Following the statement quoted by appellants is this further provision omitted by appellants:

"(8) I hereby authorize the Superintendent of Banks of the State of Mississippi with the approval of the Chancery Court of Lee County, to act for me in further consummating the reopening of the Peoples Bank & Trust Company, and in making contracts with the reopened bank in conformity with this agreement."

It thus appears that not only did the depositors signing this agreement make certain specific agreements, but that they recognized that every detail of a plan for reopening a bank could not be set out within the practical limits of a Depositors Agreement, and further, that authority must be vested in someone to meet conditions as they arose, and by the terms of Section 8 authorized the Superintendent of Banks of the State of Mississippi and the Chancery Court to act for them, and also by Section 1 agreed that the bank should be reopened on a plan to meet with the approval of the Superintendent of Banks and the Chancery Court, the two authorities designated by the laws of the State to look after the interest of the depositors. When it is considered that the Depositor's Agreement was not purported to be the iron clad terms of the reopening of the bank, but vested authority and discretion in the regularly constituted authorities, the facts alleged in appellant's statement to be unlawful and contrary to the agreement take a different aspect.

In undertaking to assert jurisdiction on the ground of appellants having been deprived of property without due

process of law, or compensation having been made therefor appellants set out many figures which are not supported by the record. They charge that there is unaccounted for in the reopening of the bank $152,485.90. This charge was fully and satisfactorily refuted before the Supreme Court of Mississippi, but being a matter of reconcilement of statements it is not set out in detail here and is attached as "Appendix 'B'," in case the court desires to consider it in detail. Suffice it to say, a greater part of this amount was $109,000.00 expense account incurred by the liquidation which had been carried by the liquidation statement in the assets column. It needs no argument that an expense account is not an asset, and so in transferring the statement to the reopened bank this item which served only to make the total assets column was eliminated as worthless. This was true as to the other items eliminated, all of which is explained in detail in "Appendix B'" should reference to them be desired.

An effort to substantiate the claim of being deprived of property is attempted in setting out a calculated amount required to pay 5% agreed to be paid upon the reopening as being different from the amount found by the court in its decree to be necessary. The amount that would be necessary to be paid in cash on the reopening of the bank was set out in the petition which was before the court on the hearing, and the appellants had every opportunity to inquire into the correctness of it before the court and make any objections they desired thereto, and failing so to do they cannot now substitute their calculation for the finding of the court. If the amount set out in the decree should be erroneous, it would be only an error of fact and such does not confer jurisdiction in this case. The amounts set out by the decree are correct, and there is no error therein. The error is in appellants' calculations in omitting matters

which had been directed by the court to be paid in full, including preferred claims and accounts of $5.00 and under, which was ordered paid as a matter of practical operation and economy on account of the smallness of them. On the other hand, the decree expressly sets out the amounts to be paid by the reopened bank both as demand deposits and deferred deposits and requires that the reopened bank shall assume liability therefor. Liability being assumed, the reopened bank received nothing thereby for which it was not to account, and there was, therefore, no dissipation of assets as charged by appellants in the statement of facts. Likewise, there is no basis of fact in the record to show that three-fifths of the 5% to be paid on the reopening of the bank was derived from the Depositors Protection Fund. Likewise, the statement that on the reopening of the bank $102,302.98 in cash from the liquidation was turned over to the reopened bank, is incorrect. The decree (R. 99) shows the amount of cash that was turned over to the bank upon reopening, setting out in detail, to be $75,977.36 plus cash held in trust on account of creation of capital structure, $14,016.56; cash collections held as Special Reserve, $12,309.06; the total of all of which makes it $102,302.98, cash in the bank upon the reopening, but over $26,000.00 of which was not available for the payment of dividends. Therefore, the using of such figure by the appellants leads to an erroneous conclusion. The same is true of the statement that there were carried into the reopened bank bonds in the sum of $57,500.00. It is claimed by the appellants that these could have been sold and this much additional cash made available. Such is not supported by the record. The record shows that these bonds were not readily collectible and were charged in the statement of the reopened bank at this figure merely as an estimated sound value for ultimate realization and with the provision that when such an amount

had been realized, any balance over such amount was to be a part of the pool assets which went to the benefit of the creditors. The record no where shows that such an amount could be realized on them in cash at any early date. It, therefore, appears that the claim of appellants that a larger amount of cash could have been made available on the reopening of the bank is without foundation. Suffice it to say, however, even if appellant's argument were true, it would not show a deprivation of property. The reopened bank was charged with certain liability to its depositors and creditors which was to be collected from certain assets turned over to it, out of which, it might realize only the amount for which it was charged and no more. In other words, for every asset turned over to it there was a corresponding liability imposed, whether such assets were cash or other property. If the reopened bank had had in fact delivered to it cash more than sufficient to have paid a 5% to the depositors upon reopening, and were permitted by the court to hold some of the cash for distribution at a later time, it would still not be a deprivation of property. It would have held it subject to liability of its creditors, and would ultimately be received by the creditors. The bank being in receivership, the creditors had no right to demand receipt of any amount in cash until the court directed it to be paid, and the court in exercising its discretion as to when the payment should be made, could not be said to have deprived the creditor of property without due process. The facts in the case do not sustain the allegations of the appellants, but even if the facts were so different as to sustain such allegations, still it would not be depriving them of property without due process of law, nor such facts as would sustain jurisdiction in this court.

Appellants seek to assert jurisdiction on the ground that the deposits were made prior to the passage of Chapter 251

of the Laws of 1932, and was subject to the laws then in force for the benefit of depositors and the liquidation of banks. Section 3817 of the Mississippi Code of 1930, which is the liquidation statute was then in force and had been since 1914. It provided a method for the liquidation of banks when they became insolvent and closed. Under the liquidation statute, and which law covered the deposit of appellants, the right to withdraw money at will did not exist after the bank closed for liquidation and was placed in the hands of the Chancery Court. While the depositor had the right to withdraw his money as he saw fit as long as the bank was in operation and to act independently with reference to it, under the law then existing when the bank was placed in the hands of the court for liquidation, his right of independent action was lost, and he could recover his money only according to the orders of the court, and his individual rights became merged into the rights of the depositors as a class, losing all right of independent action. Section 3817 gave the court and the Superintendent of Banks broad powers and discretion. This section was construed by the Supreme Court of Mississippi in *Christensen* v. *Merchants & Marine Bank of Pascagoula*, 150 So. 375, in the following language:

> "It is competent for the legislature to confer upon the Superintendent of Banks and the Chancery Court the discretion and judgment to take such action under such discretion as would best promote the general welfare."

The amount of recovery on any deposit was by the then existing law and the liquidation statute limited to the *pro rata* amount along with the other depositors from what might be recovered from the assets of the insolvent bank. The law governing creditors of banks is more extensive than argued in appellants statement and is set out by the Su-

preme Court of Mississippi in the case of *Christensen* v. *Merchants & Marine Bank of Pascagoula, supra:*

> "The creditor in such case when he makes his deposit makes it subject to the existing law, or to that which may be enacted under the constitutional power of the legislature in such cases."

Chapter 251 of the Laws of 1932, as construed by the Supreme Court of Mississippi, is remedial in its nature, and did not change the rights of any depositors, but rather was an additional remedy furnished them for the recovery of such amounts as to which they might be entitled. The first step in its application is provided to be initiated by the depositors, and, therefore, it was a remedy provided for them. It was a valid exercise by the legislature of the police power and right to legislate for the general welfare which is not abridged by its incidental effect on private contract. It was legislation with reference to banking, which is a public utility; *Noble State Bank* v. *Haskell,* 55 Law Ed. 112, 219 U. S. 102. This was, therefore, subject to the exercise of police power of the State, and contracts are subject to legislation enacted in the exercise of the police power and must yield to the exercise of such power.

St. Louis Poster Adv. Co. v. *St. Louis,* 249 U. S. 269, 63 Law Ed. 599;
Union Drygoods Company v. *Georgia Public Service Corporation,* 248 U. S. 372, 63 Law Ed. 309;
East v. *Van Deman and L. Company,* 240 U. S. 342, 60 Law Ed. 679;
Meningault v. *Springs,* 199 U. S. 473, 50 Law Ed. 274;
Chicago & A. R. Co. v. *Tranbarger,* 238 U. S. 67, 59 Law Ed. 1204.

Such legislation not only was a valid exercise of the police power of the court, but did not impair the obligations of

the depositors contract. He was already limited by law to the recovery of such amount as might be realized from the assets of the bank in liquidation. Chapter 251 of the Laws of 1932 preserved all of such assets. It provided a method by which 75% of the depositors whose interests were bound up with any obstructing minority could proceed to do that which in their judgment was to the best interest of the depositors as a whole, but subject to the approval of the Superintendent of Banks and the Chancery Court in which the liquidation was being administered. The minority of depositors lost nothing except the right to obstruct the majority and perhaps gain an advantage over the others in the same class by reason of such obstruction. There was no impairment of contract for the reason that the depositors were to get all that they could have gotten under the procedure theretofore adopted, and in this case the petition alleged, the evidence showed, and both the lower court and the Supreme Court found as a fact that the plan proposed and authorized to be executed would result in substantially greater benefit to the 5000 depositors involved. This fact having been adjudicated by the State court on evidence presented to it, the Supreme Court of the United States will not entertain jurisdiction for the purpose of reviewing the correctness of such finding of fact.

And appellee now moves the court to dismiss the appeal herein for the following reasons:

(*a*) No question may be raised by one not a party to the litigation, whether by himself or by another for him. *Braxton County Court* v. *West Va.*, 208 U. S. 192, 52 L. Ed. 450. *Puget Sound Power Company* v. *King County*, 264 U. S. 22, 68 L. Ed. 541.

(*b*) A claimed violation of provisions of the Mississippi Constitution in the decree appealed from raises no Federal

question, and will not support jurisdiction of this Court. *Noble State Bank* v. *Haskell*, 219 U. S. 104, 55 L. Ed. 112.

(*c*) Since the bank in liquidation owed no debts to correspondent banks, the question songht to be raised in regard to the rights of correspondent banks under the Mississippi statute is moot, and will not support the jurisdiction of this court. *Berlison* v. *Commercial Cable Company*, 250 U. S. 360, 63 L. Ed. 103; *Shaffer* v. *Howard*, 249 U. S. 200, 63 L. Ed. 559.

(*d*) Whether plan and decree appealed from violate the Mississippi statutes is a question of local law, raises no Federal question, and will not support the jurisdiction of this Court. *American Railway Express Company* v. *Commonwealth of Kentucky*, 273 U. S. 269, 71 L. Ed. 639.

(*e*) The decree appealed from assures appellants equal, or greater, substantial rights than they had in ordinary liquidation of the failed bank, and no substantial right is involved in this appeal. *Home Building Association* v. *Blaisdell*, 290 U. S. 398, 78 L. Ed. 413, 54 S. Ct. 231.

(*f*) Statement of facts showing jurisdiction discloses that the statute assailed is in relation to the claimed rights of appellants as depositors in a state bank, and alleged denial to them of due process of law, and impairment of their contract by virtue of a change in the banking laws of Mississippi made after appellants had deposited money in the failed bank. Appellants had neither a contract nor any vested right under the banking statutes of Mississippi in force at the time of the making of their respective deposits. Both the old and the new banking laws were, and are, mere police regulations; and appellants acquired no vested rights thereunder. This question seems to be definitely foreclosed by decisions of the Supreme Court of Mississippi and of the Supreme Court of the United States.

Love v. *Mangum*, 160 Miss. 590; *Abie State Bank* v. *Bryan*, 282 U. S. 765, 75 L. Ed. 690; *Bank of Oxford* v. *Love*, 111 Miss. 699, 40 S. Ct. 22, 250 U. S. 603, 63 L. Ed. 1165.

(*g*) There is no properly presented substantial Federal question disclosed by the record.

Respectfully submitted,

H. H. Creekmore,
C. J. Hester,
C. R. Bolton.

APPENDIX "A".

"3817. Liquidation proceedings.—In liquidating the affairs of insolvent state banks taken over by him, the superintendent of banks shall proceed by first filing a petition in the chancery court of the county in which the bank is located, submitting the liquidation of such bank to the jurisdiction of that court and thereafter the liquidation shall proceed under the orders and directions of that court. The chancery court or the chancellor in vacation shall have full jurisdiction to make any and all orders in the course of the liquidation proceedings. The case shall be styled "In the matter of the liquidation of the * * * bank by * * * superintendent of banks," and when the board of directors of the failed bank have passed a resolution consenting to the liquidation of the bank, and requesting the superintendent of banks to take charge of its affairs for the purpose of such liquidation and authorizing an officer of the bank to waive service of process and enter the appearance of the bank to the petition, the superintendent of banks shall thereafter have full and complete control and authority over the assets and affairs of the failed bank, subject only to the orders of the chancery court to which jurisdiction of the liquidation has been submitted. Suit may be instituted by him in his name as superintendent of banks to enforce the collection of any bill or other obligation due the failed bank or to preserve the assets thereof or to enforce any right at law or in equity that might or could have been enforced by the bank as a going concern. And he may employ and retain such of the employees of the bank as he may deem necessary to aid him in the liquidation. By and with the consent of the court or of the chancellor in vacation evidenced by an order entered in the liquidation proceedings he may sell any of the property, real, personal or mixed, belonging to the bank either at private or public sale, and a deed made by him under the seal and attested by the secretary of the state banking department shall convey to the purchaser all of the rights, title and interest of the bank and of the state banking department in any such property.

"The superintendent shall cause notice to be given by advertisement in such newspaper as he may direct, once a week for six consecutive weeks, calling on all persons who may have claims against the bank (but not including deposits shown by the books of the bank which shall *prima facie* be proven claims) to present the same and make legal proof thereof, at a place and within a time specified in such notice, not less than ninety days from the date of the first publication of the notice. A copy of the notice shall be mailed to all persons whose names appear as creditors on the books of the bank. If the superintendent doubts the justice and validity of any claims or deposits, he may reject the same and serve notice of such rejection upon the claimant or depositor, either by mail or personally, and an affidavit of service of such notice, which shall be *prima facie* evidence thereof, shall be filed in the office of the banking department. An action upon a claim so rejected must be brought by petition to the chancery court having jurisdiction of the liquidation of the affairs of the bank by the claimant within six months after such service or the same shall be barred. Claims presented and allowed after the expiration of the time, fixed in the notice to creditors, shall be entitled to share in the distribution, only to the extent of the assets in the hands of the superintendent at the time claims are filed, without allowance for previous distribution. Upon taking possession of the property and assets of a bank, the superintendent shall make an inventory of its assets in duplicate, one to be filed in the office of the banking department, and one in the liquidation proceedings in the chancery court. Upon expiration of the time fixed for the presentation of claims, the superintendent shall make in duplicate a full and complete list of the claims presented, including and specifying which claims have been rejected by him, one to be filed in the office of the banking department and one in the liquidation proceedings in the chancery court. Such inventory and list of claims shall be open at all reasonable times to inspection. The compensation of the special agents of the banking department, counsel and other employees and assistants and all expenses of supervision and liquidation shall be fixed by the superintendent

subject to the approval of the chancery court, or the chancellor in vacation. When the compensation for the various parties aiding in the liquidation is fixed and approved the same shall be paid out of the funds of such bank in the hands of the superintendent and shall be a prior charge and lien on such assets. The money collected by the superintendent shall be, from time to time, deposited in one or more state depositories. At any time after the expiration of the date fixed for the presentation of claims, the superintendent may, out of funds remaining in his hands, after the payment of expenses, declare and pay one or more dividends to creditors, and as soon as practicable thereafter, he shall declare and pay a final dividend, such dividend, to be paid to such persons and in such amounts and upon such notice as may be directed by the chancery court having jurisdiction of the liquidation. Objections to any claims or deposits not rejected by the superintendent may be made by any party interested, by filing a copy of such objections with the superintendent, who shall present the same to the court having jurisdiction before the time of the next application to declare a dividend. The court may make proper provisions for unproven or unclaimed deposits. When the superintendent shall have paid to each and every depositor and creditor of such bank whose claim or claims shall have been duly proven and allowed, the full amount thereof, and shall have made proper provisions for unclaimed and unpaid deposits, or dividends, and shall have paid all the expenses of liquidation, all out of the assets of the failed bank, and there still remains in his hands any assets thereof, he shall call a meeting of the stockholders of such bank by giving thirty days' notice by publication once a week for three consecutive weeks in one or more newspapers published in the county where the principal office of such bank was located. At such meeting the stockholders shall elect by ballot an agent or agents who shall wind up the affairs of the bank, and in so determining such stockholders shall vote by ballot, in person or by proxy each share of stock entitling the holder to one vote and the majority vote of the stock shall be necessary to an election, a majority of the stock present and voting

in person or by proxy being necessary. Such agent or agents shall execute and file with the banking department a bond in such amount with such security and in such form as shall be approved by the superintendent of banks conditioned for the faithful performance of all the duties of his or their trust, and so conditioned that any party aggrieved may bring or cause to be brought suit on said bond, and thereupon the superintendent shall transfer and deliver to such agent or agents all the undivided and uncollected or other assets of such corporation then remaining in his hands and take a receipt therefor signed by such agent or agents, and upon such transfer and delivery shall be discharged from any and all further liability to the bank and its creditors. Such agent or agents shall convert the assets coming into his or their possession into cash, and shall act for and make distribution of the property of said bank as is herein provided in case of distribution by the banking department, except that the expense thereof shall be subject to the direction and control of the court having jurisdiction of the cause. In case of the death, removal or refusal to act of any such agent or agents selected by the stockholders the stockholders, on the same notice to be given by the superintendent upon proof of such death, removal or refusal to act, being filed with him, and by the same vote hereinbefore provided, may elect a successor who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected. Dividends and unclaimed deposits remaining unpaid in the hands of the banking department for six months after the order for final distribution (at such rate of interest as is allowed by said state depositories) shall be by him deposited in one or more state depositories to the credit of the banking department in trust for the several depositors in and creditors of the liquidated bank from which they were received, and the superintendent shall pay over the money so held by him to the persons respectively entitled thereto upon being furnished satisfactory evidence of their rights to same. In case of doubtful or conflicting claims, he may require an order from the court having jurisdiction authorizing and directing the payment thereof.

He may apply the interest earned by the money so held by him toward defraying the expense in the payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive the same. The banking department shall file annually with the governor of this state a report of the names of the banks taken possession of and liquidated and the sum of unclaimed and unpaid deposits or dividends with respect to each of them respectively, together with a statement of the amount of interest earned by such unclaimed dividends, which reports the governor must submit to the legislature.

"In event the assets of the failed bank are not sufficient to pay the claims of all creditors and depositors in full, then in such event, when the superintendent shall have realized on all of the assets of such bank, and has applied the same toward the payment of such claims in the manner provided by law, he may file with the chancery court having jurisdiction of the liquidation a final report and upon the approval and allowance of this report he shall be discharged from any further liability to the bank and its creditors, except as to the right of depositors to be paid any remaining balance due them out of the guaranty fund as provided by law."

APPENDIX "B."

In the statement of facts by appellants to which reference has heretofore been made, a claim is made that there is a loss of $152,485.90 in assets between the total assets shown on the liquidation statement and the total assets shown in the pool account and in the reopened bank. This is a mere difference in the manner of presenting said statements, and is not in fact a discrepancy of real assets as charged by the appellants.

It will be noted that the statement on page 21 of the Record which shows assets of $1,901,672.92 shows an item of taxes and expenses of all kinds aggregating $109,855.87 as an asset, which, of course, is not an asset except for the purpose of bookkeeping. This $109,855.87 has been eliminated

from the statement on page 21, and on page 24, column 1, will be found a statement after the elimination of the $109,855.87 item. This statement in column 1, on page 24, shows assets of $1,791,817.05, which is exactly $109,855.87 less than shown on page 21. All figures on both statements are the same except that for $109,855.87, taxes and other expenses is eliminated on the assets side, and there is also eliminated from the liability side of the same statement Earnings Account of $87,928.79, which leaves a difference of $21,927.08, between the Earnings and Expense Accounts, which $21,927.08 has been eliminated from the Margin Account, which Margin Account in column 1, on page 24, is this amount less than the amount at which it is carried on page 21. Therefore, this accounts for $109,855.87 of the so called $152,485.90 discrepancy.

The balance of the so-called discrepancy of $42,630.03, which is the difference between the $152,485.90 and the $109,855.87, which has already been accounted for, is accounted for as follows:

First, $55,000.00 is eliminated from the stockholders' liability account on account of the fact that under the reopening plan of the bank stockholders who paid in 50% of their stock liability to provide capital for the reopened bank were released from the other 50%, which fact is fully set out in the testimony in the record and in the decree authorizing the reopening of the bank. This $55,000.00 added to $109,855.87, above referred to, would make a difference of $164,855.87, whereas, the net difference is only $152,485.90, making an overage of approximately $12,500.00, according to appellants' figures, but as a matter of fact there is no overage and this difference is accounted for by additions to the Loans and Discounts Account, Bond Account, Real Estate Account and Cash Account, which additions aggregate $40,284.97, and after giving effect to the reduction in the stock liability account of $27,975.91, gives an actual net increase in the assets of $12,309.06 as reflected in column 2, page 24, of the Record, which column reflects the statement of the liquidation after giving effect to the $55,000.00 collected for capital stock.

Totals of columns No. 3 and No. 4 should and will equal column No. 2 on page 24 if $55,000.00 is added to the total of these columns No. 3 and No. 4, which is the amount of the stock liability released, and after adding $60.86 to the Overdraft Account, page 24 of the Record, in column No. 4, shows Overdrafts of $4,041.94, which is evidently a typographical error. Same should show $4,101.94, which is $60.86 more than the Overdrafts shown in column 2; therefore, this $60.86 shows up in the difference in the totals of columns No. 3 and No. 4 against the total of column No. 2.

Reconcilement of the total of column #2 with the totals of columns No. 3 and No. 4 is as follows:

Column No. 2, total		$1,804,126.11
Column No. 3, total	$1,281,972.47	
Column No. 4, total	467,214.50	
Making total of columns No. 3 and No. 4 of	$1,749,186.97	
Plus amount released from Stock Liability Account referred to above	55,000.00	
Making total of	$1,804,186.97	
Less Overdrafts increase referred to above	60.86	
Making a total of Columns No. 3 and No. 4 of		$1,804,126.11

which agrees with the total of this column set out on page No. 24 in the Record.

Therefore, the difference of $152,485.90 charged by appellants is accounted for.

16

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CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 585

MRS. OSCAR C. DOTY, et al, *Appellants,*

vs.

J. S. LOVE, Superintendent of Banks of the State of Mississippi, *Appellee.*

Appeal from the Supreme Court of the State of Mississippi.

BRIEF OF APPELLEE.

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INDEX

SUBJECT INDEX

	Page
Statement of Facts	3
Argument	13
Chapter 251, Laws of 1932, is a Procedural Statute	18
Chapter 251, Laws of 1932, is Constitutional as an exercise of Police Power	25
Chapter 251 of the Laws of 1932 is declaratory of power inherent in the Chancery Court	52
Appellants have not suffered any damages	63
Appendix "A" (Section 3817 Mississippi Code of 1930)	69
Appendix "B" (Analysis)	74

TABLE OF CASES CITED

Atlantic Coast Line R. R. Co. v. Goldsboro, 232 U. S. 548, 58 L. Ed. 721	28
Bank of Oxford v. Love, 111 Miss. 699, 72 So. 133, 250 U. S. 603, 63 L. Ed. 165	25, 26
Barber v. Bryan, 243 N. W. 834, 123 Neb. 566	48
Becker v. Amos, 105 Fla. 231, 141 So. 136	52
Block v. Hirsh, 256 U. S. 135, 65 L. Ed. 865	31
Brown Holding Co. v. Feldman, 256 U. S. 170, 65 L. Ed. 877	31
Chicago & A. R. Co. v. Tranbarger, 238 U. S. 67, 59 L. Ed. 1204	28
Christensen v. Merchants & Marine Bank of Pascagoula, 168 Miss. 43, 150 So. 375	16, 26, 58, 62, 63, 67
Dorman, Bank Commissioner v. Dell, 245 Ky. 341, 52 S. W. (2nd) 892	39
East v. Van Deman & L. Co., 240 U. S. 342, 60 L. Ed. 679	27
Farmers & Merchants Bank v. Tomlinson, 55 S. D. 185, 225 N. W. 305	34
Gibbes v. Zimmerman, 290 U. S. 326, 78 L. Ed. 342	22
Hardware Mutual Fire Ins. Co. v. Glidden, 284 U. S. 151, 76 L. Ed. 214	59
Hoff v. First State Bank, 174 Minn. 76, 218 N. W. 238	35
Home Bldg. & Loan Assn. v. Blaisdell, 290 U. S. 398, 78 L. Ed. 413	28, 30, 31
Levy Leasing Co. v. Siegel, 258 U. S. 241, 66 L. Ed. 595	31
Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685, 41 L. Ed. 1165	29

Page

Love v. Mangum, 160 Miss. 590, 135 So. 223 ..... 22, 48

McConville v. Ft. Pearce Bank & Trust Co., 101 Fla. 727, 135 So. 392 33

Meningault v. Springs, 199 U. S. 473, 50 L. Ed. 274 28

Memphis v. United States, 97 U. S. 293, 24 L. Ed. 920 21

Miller v. Wilson, 235 U. S. 373, 59 L. Ed. 628 27

Milner v. Gibson, 249 Ky. 594, 61 S. W. (2nd) 273 ..... 40, 63

Nagel v. Ghinger, ... Md. ....., 171 Atl. 65 45

Nobel State Bank v. Haskell, 219 U. S. 104, 54 L. Ed. 112 ..... 26, 27

Oshkosh Water Works Co. v. Oshkosh, 187 U. S. 437, 47 L. Ed. 249 21

Paul v. Farmers & Merchants State Bank, 187 Minn. 411, 245 N. W. 832 37

Perry v. United States, 79 L. Ed. 446 66

Phipps v. Chicago R. I. & P. Co., 284 Fed. 945, 28 A. L. R. 1184 ..... 55, 58

Sliosberg v. New York Life Ins. Co., 244 N. Y. 482, 155 N. E. 749 32

Sligh v. Kirkwood, 237 U. S. 52, 59 L. Ed. 835 28

Snyder v. Massachusetts, 291 U. S. 97, 78 L. Ed. 674 60

St. Louis Poster Adv. Co. v. St. Louis, 246 U. S. 269, 63 L. Ed. 599 27

Union Dry Goods Co. v. Georgia Public Service Corp., 246 U. S. 372, 63 L. Ed. 309 27

Vial v. Penniman, 103 U. S. 714, 26 L. Ed. 602 21

Wallace v. Adams, 204 U. S. 414, 51 L. Ed. 547 61

MISSISSIPPI STATUTES CITED

Section 3792, Mississippi Code of 1930 ..... 15, 16

Section 3817 (Appendix "A") 2, 15, 53

Chapter 251, Laws of 1932 ..... 2, 3, 6, 13, 14, 18, 21, 25, 48, 49, 50, 52, 54

Chapter 146, Laws of 1934 64

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BRIEF OF APPELLEE.

THE CASE

This is an appeal by Mrs. Oscar C. Doty, et al., from a Judgment rendered by the Supreme Court of Mississippi affirming a decree of the Chancery Court of Lee County, Mississippi, entered on the 17th day of May, 1933, authorizing the reopening of the Peoples Bank & Trust Company on terms and conditions in the said decree contained.

STATEMENT OF FACTS

The Peoples Bank & Trust Company, of Tupelo, Mississippi, a state bank, organized under the laws of the State of Mississippi, was closed for liquidation on December 24, 1930, and in accordance with the laws of Mississippi was turned over to the Superintendent of Banks of the State for liquidation. The Superintendent of Banks was the head of the State Banking Department of the State of Mississippi, and under the law was charged not only with the duty of supervising banks, but also with the duty of liquidating insolvent banks. Chapter 85, of the Mississippi Code of 1930, is devoted to banks and banking and together with Chapter 251 of the Laws of 1932 sets out the law relating to banks as it existed at the time of the rendition of the decree from which this appeal is prosecuted. Section 3817, of the Code of 1930, outlines the procedure for the liquidation of banks. In effect it required the Superintendent of Banks to submit the affairs of the bank by petition to the Chancery Court of the County of the domicile of the bank, and provided that thereafter the liquidation should proceed under the orders of that court. Under it a liquidation was really a receivership with the Superintendent of Banks as the statutory receiver.

At the time this bank was closed, it had book assets of $2,477,114.78. It owed bills payable and rediscounts amounting to $457,500.00, principal sum, and secured by about $800,000.00 of the best assets as collateral. It also owed about $200,000.00 for public moneys on deposit, which under the law of Mississippi, were preferred claims. All of these amounts had to be paid before the proceeds of any collections were available for dividends to common creditors and depositors.

The bank had its principal office at Tupelo, and branches at Nettleton and Rienzi. Shortly after the bank was closed, public meetings of the depositors were held and a Depositors' Committee formed of three depositors from the parent bank and a like number from each of the branches. This Committee continued to function as representatives of the depositors generally until the bank was later reopened as hereinafter set forth. (R-33-35).

In the fall of 1932, a movement to reopen the bank was initiated by a large majority of the larger depositors of the bank. (R-70). In this they had the cooperation of the Liquidating Agent and a representative of the State Banking Department assigned for that purpose. (R-71).

After all bills payable and claims for public moneys had been paid, in the early part of 1933, this movement was given serious consideration. (R-71).

Chapter 251, of the Laws of 1932, authorized the Superintendent of Banks of the State of Mississippi to reopen any closed bank with the approval of the Chancery Court of the county in which it was situated, when at least three-fourths of the general depositors and

creditors therein, either in number or amount, agreed to the reopening thereof and signed what was termed a "Freezing of Deposits Agreement."

As an outgrowth of the movement initiated by the depositors and the Depositors' Committee, a Depositors' Agreement was generally circulated among and signed by the depositors of the bank. A copy of this agreement was made "Exhibit 2" to the petition hereinafter referred to and may be found on Pages 15-17 of the Record. This agreement was signed by holders of in excess of three-fourths of the deposits. (R-73). By this agreement it was provided that the bank was to be reopened under such plan as might be approved by the Superintendent of Banks and the Chancery Court of Lee County, Mississippi, or the Chancellor in vacation, and the Directors of the Bank. The general plan was set out in the Depositors' Agreement without enumeration of the many necessary details which had to be left for the Superintendent of Banks to work out, subject to approval of the Chancellor. It provided that the Depositor or Creditor signing was to receive from the reopened bank 25% of the balance owing him, 5% to be paid on the date of the reopening and the remaining 20% in installments of 5% when the collections on the assets taken over by the reopened bank should equal that amount. It was further stipulated that the remaining 75% was to be charged against the account of such creditors so as not to be a charge against the reopened bank but to be set up in a special account to benefit from a trust fund to be created from the remaining assets and termed the "Pool Account." It further provided that the Superintendent of Banks was to put into the reopened bank a sufficient amount of assets from the old bank to insure the collection therefrom of suf-

ficient funds to pay the 25% assumed by the reopened bank, and the remainder of the assets of the old bank was to be placed in said special fund known as "Pool Assets," to be handled in trust by the bank under the jurisdiction of the Chancery Court and subject to the supervision of the Superintendent of Banks for the pro rata payment of the 75% of claims of creditors set up in the special account.

The Depositors' Agreement further provided that the bank was to be reopened with a capital of not less than $35,000.00 and in consideration of such stockholders as should pay in cash 50% of the amount of their stock in the old bank to form capital for the reopened bank, and their continuing liable for a like amount as stockholders in the reopened bank, such stockholders were to be relieved from further liability to the depositors of the bank in liquidation. Such stockholders as did not comply with this condition and pay in 50% of the amount of their stock for new capital and become stockholders in the reorganized bank, should remain liable for the full amount of their stock which was to become a part of the pool assets to be administered in trust for the 75% of claims set up in the special account. Section 8 of the Depositors' Agreement gave the Superintendent of Banks general authority to act for creditors in carrying out details of the plan, subject to the approval of the Chancery Court.

After the Depositors' Agreement had been generally signed as above stated, the Superintendent of Banks of the State of Mississippi, on May 4, 1933, filed a sworn petition in the Chancery Court of Lee County, Mississippi, in the cause in the said court, in which the liquidation of the bank was being administered. This petition

set out the plan for the reopening of the bank, and may be found on Pages 1 to 21 of the Record. There were attached to the petition as exhibits statements showing the condition of the bank at the time of the closing, status of liquidation at time petition was filed and as the bank would be under the reopening plan. The petition recited that more than three-fourths of the depositors, as provided in Chapter 251, of the Laws of 1932, had signed the Depositors' Agreement, and in the judgment of petitioner the bank could be reopened under the plan proposed as a solvent institution and that the provisions of said Chapter 251 had been complied with, and prayed for the approval of the Chancellor and a decree authorizing the reopening of the bank.

The petition further recited that not only had the terms of said Chapter 251, Laws of 1932, been complied with, but that also the plan for the reopening of the bank was to the best interest of the depositors and creditors of the bank, and that more would be realized for them by the reopening of the bank according to this plan than could be realized from a continuation of the bank in liquidation; that the entire matter was then in the hands of the court in virtual receivership, and the only source to which the depositors and creditors could look for the payment of their claims was the assets of the bank then being administered under the jurisdiction of the court. The petitioner offered to make proof that such plan was to the best interest of all depositors and creditors and recited that should the court be satisfied that such was true, it should, acting for the depositors and creditors of said bank, authorize the reopening, and that the court had the power so to do, as being to their best interest, and bind them by the decree.

The petition alleged that there were approximately 5,000 depositors and that the number was so great that it would be impossible to personally serve each of them with process and give them notice of the hearing of the petition, but that the interests of the general depositors and creditors were common and that which was to the best interest of the depositors and creditors as a class was to the best interest of each depositor and creditor; that it was the duty of the court to enter such decree as would be to their best interest as a class and such interest would be protected by bringing into court representatives of such classes, as parties respondent. The petition prayed for the setting of a day in vacation for hearing (as was authorized by the statute), the selection of a reasonable number of depositors and creditors as representatives of a class, and that process be ordered to be served upon them to show cause why the prayer of the petition should not be granted. (R-12).

By decree of date May 4, 1933, (R-22 and 23) the hearing was set for May 15, 1933, and the court selected fifteen depositors and creditors upon whom process was directed to be served personally and further directed that publication be made of notice to all parties interested to appear on the hearing and show cause why the petition for authority to reopen the bank should not be granted. This was duly published and proof of publication made. (R-23 and 24).

In addition to the petition of the Superintendent of Banks a supporting petition was filed by the Depositors' Committee signed by all members in which they approved the plan submitted in the petition filed by the Superintendent of Banks, and asked that the court enter an order for the reopening of the bank as prayed for in his petition.

Process was served upon Mrs. O. C. Doty, as directed in the decree, and she appeared and filed objections. Process was not directed to be served upon Mrs. Nannie McCarty but she voluntarily appeared at the hearing, asked leave to, and filed objections. Their objections were ultimately consolidated and were based in the main on abstract principles of law. Such objections as went to concrete matters of fact were not supported by evidence. They merely stated the objections without undertaking to prove that the plan was not for the best interest of the depositors, or that they would suffer thereby. The hearing was had May 15, 1933, by agreement of all parties. (R-68).

On the hearing of the petitions of the Superintendent of Banks and the Depositors' Committee evidence was introduced from the Liquidating Agent who had been in charge of the bank since it closed, and the Special Representative of the State Banking Department who had been assigned to this matter, and the plan for the reopening was explained in detail. In substance, it was that the bank was to be reopened carrying in its statement liabilities for the payment of 25% of the outstanding deposits and indebtedness of the closed bank, to be paid 5% on reopening and the balance in installments of 5% as rapidly as collections should be made from assets placed in the reopened bank. There were to be set over to the reopened bank to balance these liabilities assets of value equal to the liabilities to be assumed by the reopened bank. It was shown that this was to be done by setting over to the reopened bank assets of greater face value than the amount of liabilities that was imposed upon said bank, but the exact true value of which could not be determined. Out of these assets the reopened bank was to collect only to the extent of

the liabilities imposed upon it and the balance was to go to the pool account for the payment of the 75% of the deposits and indebtedness not assumed as a liability by the reopened bank. (R-78). This balance has been commonly termed equity for pool assets. The reason given for doing this was that no one could tell with exactness the real value of the assets. That some of the assets were only partially secured, and as to some the same security was held for a number of notes and it was impossible to separate them. (R-75).

The capital stock of the reopened bank was to be $55,000.00, which had been provided by stockholders in the closed bank paying in 50% of the amount of their old stock, as provided by the depositors' agreement. A surplus of $35,000.00 and reserve of $10,000.00 for the reopened bank was to be provided by placing in the bank these amounts of assets in addition to the liability assumed for deposits and indebtedness, but the reopened bank was to repay these amounts to the pool account by paying $7,500.00 per year from the earnings of the bank until these sums had been repaid. (R-97). This was in effect the same as the depositors providing $45,000.00 for preferred stock in the bank to be repaid to the pool account at the rate of $7,500.00 per year from the earnings of the bank. This was much the same as the Reconstruction Finance Corporation has done since in taking preferred stock in banks.

The evidence showed that the expense of the liquidation up to that time had been $21,000.00 more than the income on the assets of the closed bank, and that the per dollar expense of future collections by liquidation would be two or three times higher than theretofore on account of the fact that the assets more readily col-

lectible had been realized upon. This cost would have been a loss to the depositors under a continuation of the liquidation, but under the proposed plan the 25% was to be collected by the bank without cost in excess of the earnings from such assets, thereby effecting a saving, and the 75% or pool assets at a cost of 10% of the amounts collected, such pool assets to have full benefit of all earnings on or from such assets. The evidence further showed that the depositors would realize from 10% to 25% more on their claims by reopening the bank than they would by a continuation of the liquidation; that the total amount of stock liability which might possibly be expected to be realized from enforced collections over a period of years would be about $70,000.00 or about sufficient to pay a 5% dividend to depositors, and that while under the plan this was to be released as to such stockholders as should pay 50% of the amount of their old stock to provide capital for the reopened bank, the advantage of the plan more than compensated for it in that they would gain from 10% to 25% more dividends under it than they would through a continuation of the liquidation. (R-99). Under the plan $15,000.00 to $20,000.00 had been collected from stockholders in excess of what the Liquidating Agent had expected he could collect in liquidation. (R-93). This evidence was not controverted and was accepted as true by both courts below.

After hearing the evidence and the plan explained four of the nine objectors withdrew their objections and two others did not appeal. The court adjudged that the plan for the reopening of the bank was fair and equitable and that the best interest of the depositors and creditors would be promoted thereby. A decree was rendered authorizing the Superintendent of Banks to

reopen the bank upon the plan submitted. It directed that the bank be reopened and charged with liability for 25% of the deposits and indebtedness, the several amounts of which were set out in detail, to be paid 5% in cash upon reopening and the balance in installments of 5% as rapidly as collections could reasonably be made from assets placed in the reopened bank and the court reserved the right to inquire into the progress being made in such payment and to make such further orders directing payment as might appear to the best interest of the creditors. It further directed that certain assets be set over to the reopened bank from which it was to collect a certain fixed amount which was equal to the liability imposed upon it, after which the remainder of such assets was to be transferred to the pool account for the payment of the 75% not imposed as a liability on the reopened bank. The provisions that all amounts collected above the amount of the liabilities assumed were to be held for the benefit of the 75% of deposits not assumed was clearly and repeatedly written into the decree.

The decree further provided that all assets not placed in the reopened bank and the balance on those placed therein after the collection of the amount equal to the liability imposed, should be held by the bank in the pool account to be managed in trust under the jurisdiction of the court. (R-54). This was in accordance with Section 4 of the Depositors' Agreement. (R-15). The 75% of liability not assumed was to be a charge against this account. (R-55). The reopened bank was directed to file an inventory of such assets in the Chancery Court of Lee County, Mississippi, and submit itself to the jurisdiction of said court for the handling of same in trust, and likewise to file with said inventory a

list of the *cestui que trustents* of said fund and the amounts for which they were severally entitled to participate, being the 75% of their claims not assumed by the reopened bank. The decree also directed the bank to make annual accounts of the trust to the court, naming the Superintendent of Banks as the Agent of the court to supervise the trust with power to examine said fund and assets and act to safeguard the interest of the creditors. (R-55-56). Many other provisions were made in the decree relative to the details of this matter which are not deemed necessary to state herein; but suffice it to say, the court made elaborate provisions in the decree for the interest of the creditors in every way that might reasonably have been foreseen.

This proceeding was before the Chancellor under whose jurisdiction all proceedings relative to the liquidation of the closed banks had been taken for more than two years. These matters were judicially before him and in reaching the conclusion that the plan was to the best interest of the creditors, the Chancellor had not only evidence actually adduced on the hearing, but also, his knowledge of the course of the proceedings theretofore, and for that reason his findings are entitled to the greater respect.

From the decree rendered three of the objectors appealed to the Supreme Court of Mississippi, but one of whom, and in whose name the case was there styled, Mrs. B. L. Dunn, dismissed her appeal before a decision was reached. There remained as appellants, Mrs. O. C. Doty and Mrs. Nannie McCarty.

The decree of the lower court authorizing the reopening of the bank was affirmed by the Supreme Court of the State of Mississippi. The two appellants remain-

ing have appealed to this court, and the case is now here for consideration. The appeal from the lower court was without supersedeas and the bank was permitted to reopen. The appeal from the Supreme Court of Mississippi was likewise without supersedeas and the case is now before this court on the matter of a decree authorizing the reopening of a bank now nearly two years after it became effective.

ARGUMENT

Since counsel for appellants have not furnished us copy of any brief which they may have filed, we necessarily are limited in our argument to a discussion of the points stated by them as the ones to be relied upon in the consideration of this appeal. In the statement of points to be relied upon by appellants found on pages 167-8 of the Record, appear two contentions made by them. We quote these contentions, as follows:

(1) "That Chapter 251 of the Laws of the State of Mississippi, 1932, as construed by the Supreme Court of the State of Mississippi rendered in said cause is obnoxious and repugnant to and in violation of paragraph 1 of Section 10 of the Constitution of the United States; in that, the construction placed upon said Chapter 251 of the Laws of the State of Mississippi, 1932, the decree entered in said cause by the Chancery Court of Lee County, Mississippi, and the judgment of the Supreme Court of the State of Mississippi affirming said decree impairs the obligation of the contracts theretofore existing between appellants and Peoples Bank & Trust Company, Tupelo, Mississippi, a banking corporation organized and existing as such under and by virtue of the laws of the State of Mississippi."

(2) "That Chapter 251 of the Laws of the State of Mississippi, 1932, the decree entered in said cause by the Chancery Court of Lee County, Mississippi and the judgment of the Supreme Court of the State of Mississippi affirming said decree deprives these appellants of their property without due process of law; and, denies these appellants the equal protection of the laws in violation of paragraph 1 of the Fourteenth Amendment to the Constitution of the United States."

We shall confine our discussion to these two points.

I.

THE RIGHTS OF APPELLANTS BEFORE ENACTMENT OF THE REOPENING STATUTE.

In order that we may approach intelligently the questions involved, it seems necessary to examine the rights of the complaining depositors as they existed at, and before, the enactment of Chapter 251 of the Laws of the State of Mississippi of 1932, commonly known as the "Re-opening Bank Statute," which is assailed as unconstitutional by the appellants.

When appellants made their respective deposits in the Peoples Bank & Trust Company of Tupelo, Mississippi, they entered into a contract with it whereby the bank obligated itself, while open, and before liquidation, to repay the amount of the respective deposits on demand. This contract, however, had written into it, as a part thereof, the law then in force providing for the liquidation of banks. Upon the insolvency of the bank, and its closing for liquidation, under the statute, the appellants then, and thereafter, had the right only to their proportionate share of the assets in the liquidation after payment of expenses and secured, or preferred,

claims. The law then in force governing liquidation of banks, was enacted in 1914, and with amendments is found in Chapter 85, Mississippi Code 1930. Section 3582 of that Code made it the duty of the Superintendent of Banks, upon finding that any bank was insolvent, forthwith to liquidate the same as provided by law. On December 24, 1930, by reason of insolvency, the Peoples Bank & Trust Company, was, by the Superintendent of Banks, in accordance with the statute just referred to, closed for liquidation, and the liquidation thereof submitted to the jurisdiction of the Chancery Court of Lee County, Mississippi, as provided by Section 3817 of the said Code. Said Section 3817 will be found in Appendix A hereto.

This having been done, under the law, at that time, three courses were open for handling the assets of the liquidation. The first of these was to proceed in the usual and ordinary method to convert the assets into cash, and pay the creditors and depositors in accordance with their respective rights, paying unsecured depositors pro-rata, if the assets in liquidation did not yield sufficient to pay all in full. Another method authorized by said Section 3817 of the Code was for the Superintendent of Banks, with the consent of the Court, to sell any, or all, of the property of the liquidation, whether at private or public sale, and convey such property to the purchaser, and with the funds so received make distribution to the ones entitled thereto. This sale might be either for cash, or on credit. Another, and the third method of disposing of the assets belonging to the liquidation was afforded by Section 3792 of the Code, wherein it was provided that the Superintendent of Banks should have the power and authority, by and with the consent of a majority of the directors of a closed bank,

to sell all assets of a bank in liquidation to any solvent existing bank, at such price as the Superintendent of Banks might consider fair, allowing the purchasing bank to assume the amount due all creditors of the liquidating bank. If this method was used the Superintendent of Banks must require the purchasing bank to execute a bond for the benefit of the creditors; and if the purchasing bank failed to pay any creditor the amount of his claim, such creditor had a right of action in the name of the Superintendent of Banks against the purchasing bank and the surety on its bond.

There is nothing in the record to show, or indicate, that the third method of liquidation, mentioned hereinabove, was available in relation to the affairs of the Peoples Bank & Trust Company, and no question has been raised arising out of any supposed rights of any depositor under said Section 3792. We, therefore, dismiss this method of liquidation without further discussion thereof.

From the foregoing it will be seen that the sole right of the appellants in the liquidation proceedings, and in the assets of the liquidation, was to have their respective proportionate shares of the assets realized from the liquidation, carried on in one of the statutory methods provided therefor.

The statutes referred to above were construed by the Supreme Court of Mississippi in the case of *Christensen v. Merchants & Marine Bank of Pascagoula,* 168 Miss. 43, 150 So. 375 (1933), wherein, among other things, it was held by the court that the contractual rights of depositors of a bank are to be determined, not only from the terms of the agreement actually entered into between the parties, but also that they are subject

to laws then existing, or that may be thereafter lawfully enacted. In that case the Supreme Court of Mississippi in discussing the rights of depositors of banks in liquidation, on page 58 of the official report, stated:

> "Depositors, or other creditors of a bank in liquidation, are not entitled to the payment of their claims as preferred claims, unless such claims were preferred claims before the liquidation. They cannot obstruct the liquidation, by such tactics, and be preferred over creditors who are willing to consent to the reasonable plans of reorganization. They must wait for their money until it is realized in the liquidation proceedings, or until sufficient money is realized to pay all creditors in full, or a portion of their demands to be determined by the Superintendent of Banks and the Chancery Court. They have no absolute right to be paid until the liquidation proceedings have realized sufficient money to pay them and the other creditors without giving them any preference over other creditors."

It, therefore, appears that the right of the depositor as to his claim against the bank after its closing for liquidation, were qualified by the provisions of the law. His right to demand repayment in full which had theretofore been personal, and for which he could maintain an independent action, thereafter became communal, and his rights were merged with those of other creditors as a class, and he could recover his deposit only pro rata with other creditors as dividends were directed to be paid by the court. The extent of recovery was limited by the then existing law, to the pro rata share of what might be realized out of the assets of the insolvent bank. Such assets as the bank had when it closed were all that it ever could have unless some provision were made

for its reopening. It is a distinctive feature of a banking corporation that it cannot lawfully operate while insolvent. If it cannot engage in business it cannot acquire further assets from which the claims of its depositors may be paid. An individual can engage in business, although insolvent, and thereby acquire further property to which his creditors may have recourse, or his assets may be increased by inheritance. Likewise, a commercial corporation may engage in business, although insolvent, and increase its assets. This a bank is prohibited from doing, both by the laws regulating the business of banks, and by the criminal laws of the state. Furthermore, the nature of its business is such that the public will not deal with it if insolvent. It is, therefore, clear that it can neither earn nor inherit, and thereby acquire further assets. It would be idle to say that the creditor has the abstract right to resort, not only to the present assets of the bank, but also to its future acquisitions, for the reason that it can have none.

II.

CHAPTER 251, LAWS OF 1932, IS A PROCEDURAL STATUTE.

Bearing in mind that the banking business is one in which the public is interested, it is well, in approaching a discussion of a statute enacted to regulate the same, for the situation existing at the time of the enactment to be known. It is a matter of common knowledge, of which the court will take judicial notice, that beginning in 1929 and extending beyond the year 1932, there was a nation-wide business depression, to such an extent that the sale value of all property almost disappeared, resulting in the failure and bankruptcy of many business concerns and individuals and the closing of many banks

throughout the nation. In Mississippi, as a result of this economic condition, scores of banks had been forced to close their doors and go into liquidation, with consequent enormous losses to hundreds of stockholders and many thousands of depositors. When the legislature of 1932 met it was faced with this situation, and undertook to ameliorate this condition by the enactment of the challenged statute. As stated before, scores of banks, including the one whose affairs are under review here, were in liquidation. Experience had shown that liquidation in any of the three methods then and theretofore authorized under the law had not been productive of satisfactory or helpful results. Collections could not be made by liquidating agents, and if the property of the liquidation was offered for sale no purchasers were available, willing and able to buy at a fair or reasonable price. A sale under the then existing methods could have resulted only in a sacrifice of the assets out of which the depositors were to be paid. Everyone knew of this condition, and the legislature sought to give relief to the great numbers of the public who had their funds tied up in banks in liquidation. The statute here under review was the answer to that situation. It is simply an added or cumulative method of realizing on the assets of a closed bank. It takes nothing from the depositors but gives them, if 75% in number or in amount of deposits ask therefor, a new method of liquidating the assets.

This law, in effect, provides that the Superintendent of Banks is authorized to re-open any closed bank, that is to say, any bank in liquidation, but before doing so his action must have the approval of the Chancery Court of the county in which the bank is situated, and at least three-fourths of the general depositors and creditors

therein, or depositors and creditors owning at least three-fourths of the deposits in or claims against the bank, must agree to the re-opening of the bank, and sign an agreement to accept repayment of their claims over a period of years, for the full or a lesser amount, and with or without interest. The act also provides that the Superintendent of Banks, before re-opening any bank, must be convinced that it is in a solvent condition and can pay the amounts agreed to be paid to the creditors. But, before the bank can be re-opened, the plan therefor and all the facts in connection therewith must be submitted to the Chancery Court and a decree obtained approving the plan agreed upon and authorizing the bank to re-open.

The statute also provides that if conditions above stated have been met, depositors and creditors who have not agreed to the plan shall be bound thereby, except that public depositors and those holding preferred or secured claims, or correspondent banks holding bills payable of the closed bank, shall not be so bound; proper provision must be made in the plan for the payment of these excepted creditors, but the statute specifically provides that such arrangement shall not operate prejudicially to the rights of the general depositors and creditors of the bank. Since there were no such creditors of the excepted classes of the bank here involved, this provision of the law is not before the court.

It is also in the act provided that the Superintendent of Banks shall have no right to diminish the assets of a closed bank to the prejudice of depositors and creditors, and that any assets charged out shall be held by the bank and collected for the benefit of its depositors and creditors.

The act simply provides, as stated before, an additional method of liquidation through the bank re-opened, and does not provide in any way for the taking of any asset, to which a depositor has a right to look for payment of his claim, away from the liquidation, or to deprive any depositor of any right to the assets of the liquidation.

This statute is not mandatory. It merely provides fuller and more adequate procedure for the relief of depositors and an alternative method of completing the liquidation of closed banks. It will be noted from the language in the beginning "that the Superintendent of Banks be authorized to re-open any closed bank," that it merely gives authority. It did not supersede the liquidation statute then in force, being Section 3817 of the Code of 1930, but complements it. It furnishes an additional method of procedure in liquidation to be availed of on the condition of the agreement of 75% of the depositors thereto. The two statutes are in *pari materia*. They relate to the same subject matter, and to the same classes of persons or things, and have a common purpose. Chapter 251 of the Laws of 1932 did not take away anything of the remedies theretofore afforded the depositors in closed banks under Section 3817. The depositors' contract was not impaired, and neither was the remedy. On the contrary an additional remedy was given. It is the fundamental rule of law that a state may alter, enlarge, modify, or limit existing methods of procedure and substitute or provide others without impairing contracts, if a sufficient one be left or provided. *Memphis v. United States*, 97 U. S. 293, 24 L. Ed. 920. *Vial v. Penniman*, 103 U. S. 714, 26 L. Ed. 602. *Oshkosh Water Works Company v. Oshkosh*, 187 U. S. 437, 47 L. Ed. 249.

The Supreme Court of Mississippi has held to like effect in the case of *Love v. Mangum,* 160 Miss. 590, 135 So. 223, where the court said:

> "Generally citizens of the State have no vested rights in the existing laws of the State which will preclude their amendment or repeal. There is no implied promise of the State to protect its citizens against incidental injuries occasioned by change in the laws."

The Supreme Court of the United States has recently held that there is no property right in a constitutional sense in any particular form of remedy. *Gibbes v. Zimmerman,* 290 U. S. 326, 78 L. Ed. 342.

The additional remedy did not deprive anyone of due process of law. It was elective on the part of the depositors as to whether or not they should use it, and it still remained a judicial procedure.

This remedy gave to the depositors rights in the liquidation which they had not theretofore enjoyed. When the bank was closed their right of individual action was merged into that of the class, and they all shared alike, and were bound alike by the action of the Court, and the Superintendent of Banks as the statutory liquidator and *quasi-receiver.* Under this new statute they were given a right, acting through the 75% majority, to affect the liquidation, but the first step must be on the part of the depositors. Three-fourths of them must first agree on a plan. Until this was done the law does not go into operation. Even then, it was not the absolutely controlling factor and the 75% were not empowered to arbitrarily enforce their will on the minority. It did not take the matter out of the hands of the Superintendent of Banks or the Chancery Court.

It was next provided that the Superintendent of Banks must be satisfied that the plan was sound. The law reads:

> "Providing the Superintendent of Banks is convinced that such bank is in a solvent condition and can repay the depositors the amount of their deposits in accordance with the terms of the agreement for the repayment of same."

The agreement of 75% of the depositors and the approval of the Superintendent of Banks must be had, but yet this does not put the law into operation. Only after this had been done could it be presented to the court having jurisdiction over the liquidation by verified petition submitting it to the court for action. The law then recites:

> "But before any such bank shall be re-opened the entire plan for the re-opening of same and all facts in connection therewith, shall be submitted by the Superintendent of Banks to the Chancery Court of the County in which the bank is situated, or to the Chancellor in vacation by proper petition duly verified, such petition to contain a statement of the assets and liabilities of the bank, and such other information as may be necessary to convey to the court, or chancellor, the true facts with reference to the condition of such bank, and a decree of the court, or the chancellor in vacation, obtained approving the plan agreed upon for the re-opening of such bank, and authorizing same to be re-opened."

The court here acts for all of the creditors and must approve the plan before it can become effective. There could be no reason for submitting it to the chancellor except that he is to protect the interest of the other

creditors. The presumption of law is in favor of honesty, integrity and proper action on the part of the court, and that it will act for the best interest of all parties. It then becomes a judicial matter. The issue is whether or not the proposed plan is for the best interests of the creditors of the closed bank. It was clearly the intention of the law to give the court the power to render a decree authorizing the re-opening of the bank only where the proof before the court was that it was to the best interest of the creditors that this be done. The statute requires that a decree approving the plan must be obtained. It will be remembered that this decree is to be obtained from the chancellor whose decrees are presumed to be equity. Wherein could the rendering of equity to a depositor impair his contract?

It would be hard to conceive of a law where more safeguards were afforded for the protection of the minority than in this case. All rights of the depositors, under the law, at the time of the closing of the bank remained in full force and effect, and all remedies and means of enforcing such rights that existed at that time still remain, except the right of dissenting depositors to contend for final liquidation of the bank through the court contrary to the finding of the court that the plan for re-opening was for the best interest of all parties, and that more would be realized by them under such plan than through the strict adherence to the old plan of liquidation to the last dollar. It is doubtful whether, under the law, as theretofore provided, the depositors had any such right, as the court had the inherent power to so conduct the liquidation in the winding up of the affairs of the closed bank as not to have all of the assets consumed in costs and expenses for such proceed-

ings, and for this purpose could have ordered all of the assets, to say the least of it, all of a slow and doubtful nature, sold *in solido*.

If such a right existed under the old law, and which is doubtful, taking away this right from them, could not possibly be construed as an impairment of any contract they had, but in the light of reason and common sense must be considered only a change of remedy. It is clearly the law that a remedy may be changed provided the new one substituted is equally effective as the old one, and where it is shown, as in this case, that the remedy given by the new statute will produce more for the depositors than the old remedy, it can not be held to be an impairment of the contract, and neither can it be held to be a less efficient and useful remedy.

III.

CHAPTER 251, OF THE LAWS OF 1932, IS CONSTITUTIONAL AS AN EXERCISE OF POLICE POWER.

We respectfully submit that the enactment of Chapter 251, of the Laws of 1932, was a valid exercise by the Legislature of the police power and the right to legislate for the general welfare, which right is unabridged by its incidental effect upon private contracts.

Banks are Corporations of Quasi Public Nature. In the case of *Bank of Oxford v. Love*, 111 Miss. 699, 72 So. 133, the Court had under consideration the act establishing a banking department in Mississippi. In the course of the decision it was said that it is settled by the decisions that the banking business is affected with a public use, and that it is within the power of the Legislature to enact laws under the police power regulating

the banking business. In support of this statement, a number of cases from the Supreme Court of the United States were cited, including that of *Noble State Bank v. Haskell,* 219 U. S. 104, 54 L. Ed. 112. In that case there was involved the validity of the guaranty of bank deposits law of Oklahoma, which was attacked on the ground that it deprived the bank of its property without due process of law and impaired the obligation of contracts. The Court upheld the statute, and in the course of its opinion said:

> "The power to compel, beforehand, cooperation, and thus, it is believed, to make a failure unlikely and a general panic almost impossible, must be recognized, if government is to do its proper work, unless we can say that the means have no reasonable relation to the end."

The Court held further that the enactment of the guaranty law by the legislature of Oklahoma was a valid exercise of the police power. The case of *Bank of Oxford v. Love,* supra, was carried to the Supreme Court of the United States where the decision of the Mississippi Supreme Court was affirmed in 250 U. S. 603, 63 L. Ed. 165. In this opinion the Court held that the power of the State to establish such reasonable and general regulations of banks as may be essential to public safety is a commonly recognized power.

The Supreme Court of Mississippi in the case of *Christensen v. Merchants & Marine Bank,* 168 Miss. 43, 150 So. 375 (1933) held:

> "Business of a bank is a public utility, or a business, for the public use, and the legislature has very comprehensive powers in dealing with and

regulating such business. *Noble State Bank v. Haskell*, 219 U. S. 104, *Shalenberger v. First State Bank*, 219 U. S. 114."

It is only arbitrary restraint and impairment of contracts and not immunity from reasonable regulations to safeguard the public interest that the State and Federal Constitution prohibit. *Miller v. Wilson*, 235 U. S. 373, 59 L. Ed. 628.

Contracts being subject to legislation enacted in the exercise of the police power, an act is not invalid because of its incidental effect upon them. *St. Louis Poster Adv. Co. v. St. Louis*, 246 U. S. 269, 63 Law Ed. 599.

Contracts must yield to the public welfare when the latter is appropriately declared and defined and the two conflict. *Union Dry Goods Co. v. Georgia Public Service Corporation*, 248 U. S. 372, 63 Law Ed. 309.

Where contracts are made by parties, either of whom, is subject to statutory regulation, the contracts must, of necessity, be subject to the exercise of the Sovereign Power of the State to enact legislation for the protection of the general welfare. *East v. Van Deman & L. Co.*, 240 U. S. 342, 60 L. Ed. 679.

"It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though the contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the Sovereign right of the government

to protect the lives, health, morals, comfort and general welfare of the people and is paramount to any rights under contracts between individuals." *Meningault v. Springs*, 199 U. S. 473, 50 L. Ed. 274.

This was followed in a later decision in *Chicago & A. R. Co. v. Tranbarger*, 238 U. S. 67, 59 L. Ed. 1204, wherein the court said:

> "It is established by repeated decisions of this Court that neither of these provisions (the contract and due process clauses) of the Federal Constitution has the effect of overriding the power of the state to establish all regulations reasonably necessary to the health, safety, or general welfare, of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; that all contract and property rights are held subject to its fair exercise . . . . And it is also settled that the police power embraces regulations designed to promote the public convenience, the general welfare and prosperity, as well as those in the interest of the public health, morals, or safety."

Neither the contract clause nor the due process clause is superior to the exercise of the police power of the state. *Atlantic Coast Line R. R. Co. v. Goldsboro*, 232 U. S. 548, 58 L. Ed. 721, *Sligh v. Kirkwood*, 237 U. S. 52, 59 L. Ed. 835.

These principles with reference to the exercise of the police power by the state have been further confirmed by this court, in the case of *Home Building & Loan Association v. Blaisdell*, 290 U. S. 398, 78 L. Ed. 413, wherein it is said:

"Not only is the constitutional provision qualified by the measure of control which the state retains over remedial process, but the state also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end, 'has the result of modifying or abrogating contracts already in effect.' *Stephenson v. Binford,* 287 U. S. 251-276, 77 L. Ed. 288. Not only are existing laws read into contracts to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while . . . . a government which retains an adequate authority to secure the peace and good order of society. This principle of harmonizing the constitutional prohibition with the necessary residium of state power has had progressive recognition in the decisions of this Court."

And the Court further quotes from *Long Island Water Supply Co. v. Brooklyn,* 166 U. S. 685, 692; 41 L. Ed. 1165, 1167:

"But into all contracts whether made between states and individuals, or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are superinduced by the preexisting and higher authority of the laws of nature, of nations, and of the community to which the parties belong; they are always presumed and must be presumed to be known and recognized by all, or binding upon all and need

never, therefore, be carried into express stipulation for this would add nothing to their force. Every contract is made in subordination of them and must yield to their contract as conditions inherent and paramount, wherever a necessity for their execution may occur."

That the state has the authority to exercises such power is expressed in the following language from the case of *Home Building & Loan Association v. Blaisdell*, supra:

> "The economic interest of the state may justify the exercise of its continuing the dominant protective power notwithstanding interference with contracts."

We respectfully urge that the economic interest of the state not only justified, but even constrained the legislature to exercise this paramount sovereign power for the common good of the general public, even though private rights were thereby incidentally affected (which we say were not in this case). It is current history which has heretofore been recognized by this Court and other courts that since the latter part of 1929 the nation has been in a period of economic depression, which has even at times seemed to threaten the national existence. Congress took notice of this in enacting various recovery laws; such as, providing for the Reconstruction Finance Corporation, and numerous other agencies. The President has recognized it in proclamations. At the time Chapter 251, Laws of 1932 was passed a large number of banks in Mississippi had closed for liquidation, and various efforts had been made to cope with the situation and rehabilitate them. In many towns all of the banks had closed and were in liquidation. Commerce had been

impeded and prosperity impaired. Unemployment was at a high point. Banking was a public utility and an effective aid toward recovery. As evidence of this, we cite the fact that the lowest depth of the depression was when the banks of the nation were closed during the banking holiday proclaimed by the President. Furthermore, one of the first steps taken by the Congress and the National Government to recover from the condition of national depression was to reopen and rehabilitate the banks. For this purpose the Reconstruction Finance Corporation was authorized to render substantial financial assistance to the banks. Under such conditions, not only was there warrant for the exercise of the paramount sovereign power of the state in reopening banks for the common weal, even though private contractual rights might incidentally be affected thereby, but there existed an emergency which was national in its scope. The Supreme Court of the United States has held that in times of public emergency the police power of states is extended even beyond that in normal times. *Block v. Hirsh*, 256 U. S. 135, 65 L. Ed. 865, *Brown Holding Company v. Feldman*, 256 U. S. 170, 65 L. Ed. 877, *Levy Leasing Co. v. Siegel*, 258 U. S. 241, 66 L. Ed. 595.

This has more recently been recognized in the case of *Home Building & Loan Association v. Blaisdell*, supra.

On this question the Court of Appeals of New York held:

> "That the government may be required in times of public stress so to legislate as to nullify private contracts is an implied term of the law of every contract, so that such legislation, if enacted, does not impair the obligation of the contract with-

in the meaning of the limitation." *Sliosberg v. New Lork Life Ins. Co.*, 244 N. Y. 482, 155 N. E. 749, 756.

The extent to which legislation may lawfully go in emergencies would certainly sustain Chapter 251, Laws of 1932, if resort must be had thereto. We do not think it necessary to invoke the emergency powers in order to sustain this statute because there was in fact no impairment of the contract rights involved therein. The Supreme Court of Mississippi in its majority opinion in this cause held that this statute was "remedial in its nature and operation, among a number of representative acts devised in the attempt to meet, in so far as practicable, the unusual conditions brought about by the present economic depression, the most serious within the present generation, and in the effort to salvage something from the general wreck of things." (R-111).

That the exercise of this paramount sovereign power by the states for the purpose of reopening banks and relieving conditions was reasonable is shown by the fact that it has had quite a general use among various states as conditions have arisen in these states making it necessary.

Following the collapse of the land boom in Florida, the legislature of that state in 1927 enacted Chapter 11849 authorizing the reopening of closed banks under freezing of deposits agreements. The act authorized the comptroller, upon the petition and consent of 75% of the total deposits, to reopen banks and to freeze deposits. This statute has been before the Supreme Court of Florida in more than one case, but the fullest discussion thereof by that Court seems to be in the opinion in the case of *McConville v. Fort Pearce Bank &*

Trust Company, 101 Fla. 727, 135 So. 392 (1931). In that case, a depositor sued the reopened bank for the amount of his deposit, and the bank pleaded that the comptroller took possession of it and thereafter, on the petition of 75% of the depositors, entered his order freezing the deposits, directing that 5% of the deposits be paid on reopening of the bank and 45% in certificates of deposit due on or before 3 years, and the remaining 50% to be paid from the proceeds obtained from slow and doubtful assets set aside for the benefit of depositors, and that it was ready to comply with the order so made. Demurrer to the plea was filed for a number of reasons not here important, but also because the plan deprives the plaintiff of his property without due process of law and impairs the obligation of contracts. The demurrer was overruled, final judgment entered dismissing the case, and appeal taken. The court, in discussing the question of impairment of the obligation of contract, said:

> "It is well established that all contracts are inherently subject to the paramount powers of the sovereign, and the exercise of such powers is never understood to involve their violation. The statute here involved is not within the provision of the constitution forbidding the state to pass laws impairing the obligation of contracts."

The Court also held that banks are indispensable agencies through which industry, trade, and commerce are carried on, and are of a public nature and subject to statutory regulation for the protection of the public.

On the question raised by the plaintiff that he did not sign the agreement to freeze the deposits, the Court said:

"It cannot be seriously contended that depositors may not apply the composition agreement plan heretofore recognized and applied to other creditors of bankrupts . . ."

The Court held that all depositors of banks should be treated as a class, on the theory that what is for the best interest of a class as a whole may be properly imposed by the comptroller as one of the conditions for reopening the bank. In conclusion, the Court upheld the statute as valid.

During the period of deflation of farm values in the early 1920's, certain northwestern states enacted statutes authorizing the reopening of banks on certain conditions, among which was South Dakota. In its essential aspects, the statute of South Dakota is the same as that of Mississippi. The Supreme Court of that state had under consideration their statute in the case of *Farmers & Merchants Bank v. Tomlinson*, 55 S. D. 185, 225 N. W. 305. In that case the facts were: On November 6, 1927, the bank went into liquidation, and on February 5, following, the Superintendent of Banks, on a petition representing more than 80% of the amount of depositors, executed an agreement for a re-organization plan. The proper court entered an order to show cause on February 15 why the bank should not be reopened under the plan, and why the nonconsenting depositors should not be held subject to the terms of the agreement. Notice was given by publication in one issue of a daily paper, and on the return day certain parties appeared and objected, pleading that the law under which the proceedings were had was unconstitutional as impairing the obligation of their contract as depositors with the bank, and as depriving them of their property without due process of law.

The trial court overruled the objections and approved the order of the Superintendent of Banks in reopening the bank, in accordance with the provisions of Chapter 104, Laws of 1925, and appeal was taken to the Supreme Court. On the question of notice, the court held that the notice which actually enabled the appellants to get into court and present their case was sufficient. In the case at bar, actual notice was served on one of the appellants and the other had sufficient notice to enable her to file objections and be heard, although, of course, they were already in court in the liquidation proceedings under the notice given therein to all depositors and creditors, as required by the liquidation statute in force before the enactment of Chapter 251, Laws of 1932. The Supreme Court of South Dakota, on the question of impairment of obligation of contract, referred to the decision of the Supreme Court of Minnesota in *Hoff v. First State Bank,* 174 Minn. 76, 218 N. W. 238, and adopted as its own the conclusion of the Minnesota Court and held that the objections to the constitutionality of the statute were untenable. In conclusion the Court said:

> "The constitutionality of the law rests upon the same principle which federal and state insolvency laws permitting composition of an insolvent's debts are held constitutional."

In the Minnesota case of *Hoff v. First State Bank,* 174 Minn. 76, 218 N. W. 238, followed by the Supreme Court of South Dakota, there was involved the constitutionality of Chapter 28, Laws of 1925, of Minnesota authorizing reorganization of banks in liquidation. In that case the court, in language particularly pertinent to the situation existing in Mississippi, said:

"Due to the financial situation existing at the time, and since the law was passed, many state banks were then in course of liquidation, or have since failed, and many such banks (stated in one of the briefs to be 28 in number) have been reorganized and reopened pursuant to this law. The question presented is therefore important, and affects many banks and individuals. The law is remedial. Its purpose was to meet the existing situation and assist and benefit depositors and unsecured creditors of these banks, by giving them an opportunity to work out of their difficulties with less loss and to better advantage than the carrying through liquidation by the commissioner."

Again the court said:

"The supervision and control of the state over the business of state banks, as well as over the liquidation of such banks, concerns a matter of vital public interest and affects the public welfare. If legislation on such subjects reasonably tends to promote the best interests of the creditors of such banks and the public, then it should not be held to unreasonably or arbitrarily restrict the liberty to contract within the law in force when such contract is made. A business in which the public has an interest or use, and which affects the public welfare, is subject to regulation by statute."

Again the court said:

"Whatever may have been the status of banks in ages past, when but few people had money therein, the use of banks has now become so general and necessary that they practically become public institutions."

And again the Court said:

> "The Commissioner of Banks, when he has taken over an insolvent state bank, represents and acts for the bank and its stockholders and creditors as well. He is a state officer designated for such purpose. The commissioner, when he approves a reorganization agreement, is so acting for the bank and its stockholders and creditors. He is presumed to be an impartial agent for that purpose, and to act fairly, impartially, and justly."

The Minnesota Court held that its statute neither impaired the obligation of contracts nor denied anyone due process of law.

The Supreme Court of Minnesota had before it for the second time the constitutionality of its bank reorganization statute in the case of *Paul v. Farmers & Merchants State Bank*, 187 Minn. 411, 245 N. W. 832. In that case the facts were: Plaintiff brought suit to recover the amount of a draft purchased by him from the defendant bank prior to its closing. He did not consent to the reorganization and reopening of the bank under the agreement executed pursuant to the law, which agreement had been entered into by 90% of the depositors and unsecured creditors of the bank. The Court said that the law provides that a closed bank may be reorganized and reopened under a plan and agreement of 90% of the depositors and unsecured creditors of the bank when approved by the Commissioner of Banks, and that all other depositors and unsecured creditors are bound by such agreement the same as if they had joined in the execution thereof. The Court then said:

> "A brief statement as to the scope and effect of that decision (*Hoff v. First State Bank*, supra,)

may be of value. In that case plaintiff brought suit to recover on a certificate of deposit against the bank, which was, at the time the action was brought, doing business, and presumably solvent. Plaintiff stated a cause of action in his complaint by alleging the issuance of the certificate of deposit, that it was past due, and that payment had been refused. Defendant, by its answer, alleged that after the issuance of the certificate of deposit the bank became insolvent and was closed and taken over by the Commissioner of Banks; that thereafter the bank was duly reorganized and reopened under the law we have cited, under an agreement whereby 90% of the depositors and unsecured creditors agreed to a 50% reduction in their claims. A demurrer was interposed to this answer, and overruled by the trial court. We sustained the order overruling the demurrer, thereby holding that the answer stated a good defense. We said in that connection that the action of the Commissioner of Banks was not conclusive against nonassenting creditors, and that they might, by suit or appropriate action, contest the validity of the act of the commissioner. Except on constitutional grounds, no suggestion or claim is made in the present case that the reorganization agreement and proceedings were irregular or invalid, so that question is not presented."

The Court entered judgment giving the plaintiff 40% of the amount of his claim, in accordance with the reorganization agreement.

A like statute was under consideration by the Court of Appeals of Kentucky (the court of last resort in that state) in the case of *Dorman, Bank Commissioner v. Dell,*

245 Ky. 341, 52 S. W. (2nd) 892. In that case the Court held that a statute permitting three-fourths of the depositors, with the banking commissioner's approval, to reorganize an insolvent bank, would not impair contract rights of depositors not agreeing to reorganization, since depositors have no absolute right to continue liquidation when that course becomes unnecessary to secure their rights. In discussing claim of impairment of obligation of contract between the bank and its depositors by reorganization statute, the Supreme Court of Kentucky said:

> "It is said that when a bank closes its doors if a depositor thereof has a claim against it for the amount of his deposit which constitutes property subject to his control, that the provision of House Bill 84 deprives the minority depositors of the right of control over such property, and makes it absolutely subject to the arbitrary power of the three-fourths majority of the depositors. The argument is fallacious. The 75% of the depositors that concur in the reorganization agreement do not have absolute or arbitrary power over the rights of the other depositors. The bank is insolvent and unable to perform its contract with the depositors. Each of the depositors has a claim against the bank, to be paid out of the assets. It is certain that the depositors are confronted with a condition that may result in a loss. The contract with the depositors is not impaired by the statute, which seeks merely to provide means for the mitigation of the losses already incurred. If it is possible for a reorganization to be perfected, the loss of each depositor may be lessened. The act does not authorize the confiscation of any property. Any plan of reorganization must be sub-

mitted to the banking commissioner and his approval or disapproval must be obtained, and his action is subject to review by the circuit court and by this court. The officer has authority and it is his duty to protect all of the depositors. The majority, no less than the minority, must be considered. If all of the depositors should agree upon a reasonable plan of reorganization, certainly no one could say that contract rights were unconstitutionally impaired. If any of the depositors do not join in the plan, other provisions may be made for the protection of their just rights. The sufficiency of the protection afforded would be a proper subject for consideration by the commissioner, and if his acts were unsatisfactory to anyone concerned, the circuit court is empowered to review them. The depositors have no absolute right to continue liquidation when that course is no longer necessary to secure their rights. The act does not authorize three-fourths of the depositors to reorganize the bank without regard to the rights of the minority, nor does it allow one-fourth of the depositors to defeat the purpose of the remaining three-fourths."

And again the Court said:

"In view of these considerations, there is no room for complaint that due process of law is denied by consenting to the commissioner to grant a reasonable time to the parties vitally interested to work out a plan of their own."

The Supreme Court of Kentucky had this statute before it again in the case of *Milner, et al v. Gibson, et al*, 249 Ky. 5941, 61 S. W. (2nd) 273. In this case the Kentucky Court reexamined the statute authorizing re-

organization of banks then in liquidation, and in a full and well reasoned opinion, fortified by many authorities, upheld the validity of the statute against all constitutional objections. In the course of its opinion the Court said:

"It is also insisted that the act of 1932 is within the inhibition of the due process clause of the Constitution of the United States (Amendment 14). The ultimate purpose of both the act of 1912 and of 1932 is remedial, to enable the depositors of an insolvent bank and trust company, to retrieve the assets, and avoid a loss of their claims against it, by and through the instrumentality of the banking and securities commissioner.

"Under the Act of 1912, when an insolvent bank, or combined bank and trust company, was placed, by the board of directors as provided by Section 165a-18 thereof, in charge of the banking and securities commissioner, and after he assumed charge of it and of the possession of all of its assets and property of whatever nature, then all rights of whatever nature vested in the banking and securities commissioner and the only remaining right of the depositors was the right to verify, present their claims, grieve, and hope to receive their ratable share in the distribution of the assets by the commissioner, or his deputy, in the manner and within the time required, in his discretion, subject to the supervision of the courts. Also under the act of 1912, the banking and securities commissioner, in the exercise of a sound discretion, may compromise or settle any claim in favor of, or against, the corporation, retain and collect the notes, bills, choses in action, or securities owned

by the institutions, which make up a part of its assets, or if, in the exercise of his discretion, he deems it best, he may sell the same, including the real estate owned by it, without the consent and approval of the depositors and other creditors. *Cumberland State Bank v. White,* 222 Ky. 126, 300 S. W. 339; *Cartmell v. Commercial Bank & Trust Company,* 153 Ky. 798, 156 S. W. 1048; *Ex parte Smith,* 160 Ky. 83, 169 S. W. 582; *American Southern National Bank v. Smith,* 170 Ky. 512, 186 S. W. 482, Ann. Cas. 1918B, 959; *Jennings v. Fidelity & Columbia Trust Company,* 240 Ky. 24, 41 S. W. (2nd) 537; *Fletcher's Cyclopedia of Corporations,* Chap. 61, Sec. 4840; *Dorman v. Bell,* 245 Ky. 34, 52 S. W. (2nd) 892. The act of 1932 does not lessen his power. A reorganization under it does not deprive the depositors of existing rights, nor impair any contract enforceable by them, for after going into liquidation they no longer have any existing contractual rights to be impaired. In fact, they thereafter have only the restricted rights afforded them by Section 165a-17, subject to the review of the courts. They have no absolute right to continue liquidation when that course is no longer necessary or adequate to secure their rights. *Dorman v. Dell,* supra. If any contract or right of the depositors is affected or impaired, it is not by the act of 1932, but will be the fault of the plan of reorganization which we shall hereafter consider.

"When a reorganization plan is approved by the commissioner, either with or without a decree of court, and the plan is permitted to be executed, and the bank reopened, such acts in essence and in effect are a sale of the assets of the bank in his

charge, for and in consideration of the reopened bank paying to the depositors and other creditors the agreed price therefor as set forth in the plan of reorganization. The power thus exercised by him under the supervision of the court is equivalent to that which he, with the advice of the court, may exercise under the act of 1912, without the aid of the act of 1932. *Jennings v, Fidelity & Columbia Trust Company,* 240 Ky. 24, 41 S. W. (2nd) 537. The values of the assets of the bank, or bank and trust company, included the liability of the officers for negligence, fraud, or other wrong doing as well as the claims against the stockholders for their double liability, are presumed to be within the knowledge of the commissioner when he approves the plan of reorganization, either with or without the direction of the court, and the values thereof are presumably taken into consideration by him when consenting to the reorganization and reopening of the bank, and by the court when directing him to do so, and thus the depositors and other creditors obtain the benefits thereof, by and through the reorganization and reopening of the bank. In respect to the double liability of the stockholders this liability continues to the amount of the reorganized capital stock after the reorganization, for the protection and security of the depositors and other creditors, and exists by reason of the plan of reorganization, although they may be different individuals. It is neither thereby lost or surrendered. Instead of impairing their rights, the act of 1932 bestows upon the depositors and creditors a privilege, not existing *anterior* to its enactment, of participating in the restoration of the control of the

assets of the bank to sympathetic, interested parties and removing that of the antipathetic, disinterested liquidating agent and his assistants."

And again in the opinion in discussing the question of due process and notice, the Court said:

"The depositors who formulated and signed the plan of reorganization, after it was presented to and vetoed by the banking and securities commissioner, filed a petition in the circuit court of the county in which the Hardinsburg Bank & Trust Company was located and in which the proceeding was pending relating to the liquidation of the bank. The act of so filing their petition in the Breckinridge circuit court was authorized by and in conformity with Section 165a-17. All depositors who had theretofore filed their claims against the bank were parties to the liquidation proceedings at the time of the filing of the petition of the agreeing depositors, and the nonconsenting depositors can not complain of the absence of further or additional notice of the filing of the petition. *Hughes v. Marvin,* supra. The Breckinridge circuit court had exclusive jurisdiction of the parties and the subject matter. *Barr v. Dorman,* 249 Ky. 367, 60 S. W. (2nd) 939, decided May 23, 1933. The statute authorizing the filing of the petition under Section 165a-17 does not provide for, nor require, the issuance of process thereon, as required by the civil code of practice in civil cases. Parties to such proceeding pending in court must at their peril take notice of the application of other parties thereto, in open court, for any relief to which they may conceive they are entitled. The objection of the nonconsenting depositors and the banking and securities

commissioner to the proceedings of the court on the ground that process was not issued after the filing of the petition, and served on each of them, before the court proceeded to hear and determine the propriety of approving and directing the commissioner to approve the plan of reorganization and opening of the bank, is not available. The argument presented that the special demurrer was improperly overruled is equally without merit. The objecting depositors filed an answer to the petition and afterwards entered a motion to withdraw certain portions of it. It is also insisted that the action did not stand for trial at the time of the rendition of the judgment. The basis of these contentions is that the rules of practice and procedure as prescribed by the Civil Code of Practice in civil actions should be adhered to by the parties and the court when the petition is filed as authorized by Section 165a-17. The rules of practice and procedure prescribed by the Code should not be regarded as supplemental to, nor to supplant, the procedure authorized by Section 165a-17. Simple, expeditious procedure is contemplated by this section for the benefit and protection of the depositors."

Maryland has enacted a reopening of banks statute and the validity thereof was before its court of final resort in the case of *Nagel v. Ghingher, Bank Commissioner*, ____ Md. ____, 171 Atl. 65. In that case the facts were: Three depositors brought suit against the Bank Commissioner and Union Trust Company alleging that they deposited money with the Trust Company upon the agreement that they could withdraw it upon demand. That they had been unable so to do since February 24, 1933, because the state on that day proclaimed a bank

holiday, which continued until March 4, 1933, when the bank was taken over by the banking commissioner for liquidation.

Further, that on May 29, 1933, a reorganization plan was formulated, which plaintiffs refused to accept. They asked (1) for an injunction restraining the carrying out of the plan, (2) that the statute providing for reorganization of banks be declared unconstitutional, and (3) that the plan be declared illegal and void.

The statute of Maryland, briefly stated, provides for a reorganization plan to be worked out by the board of directors and then by them filed with the bank commissioner. If he approves of the plan he gives notice by publication for two weeks thereof, and by mailing notices to depositors. If any depositor shall not in 30 days approve the plan he may apply for the ascertainment of the fair liquidating value of his claim, which shall be paid either in money or kind. The court may, in lieu of fixing cash value, apportion to objecting parties their distributive share in the assets of the bank. But, unless 33 1/3% in interest of depositors and unsecured creditors file such application, the plan is to be binding on all, both consenting and non-consenting depositors, the same as if they had assented.

We quote from the opinion of the court as follows:

> "The second objection urged against the constitutionality of Section 711 is that the section provides no standard for a reorganization plan to be proposed by the directors or approved by the commissioner. It would have been impracticable for the statute to have erected explicit standards to govern the board of directors in the formulation of a plan of reorganization. The financial affairs of

the numerous banking institutions present independent problems with respect to every one, since they differ in capital, assets, and liabilities, in the scope and nature of their financial operations, in their organization, management, and field of activity. It violates no principle of law to delegate to the governing body of a financial institution the preparation and proposal of a plan of reorganization, and then to require its presentation to the bank commissioner to study and investigate the plan, and to make his approval necessary before the plan may be submitted to everybody in interest for their acceptance or disapproval. The method prescribed assures that the plan will originate with the officers of the banking institution who are charged with the duty and have been administering its affairs and are most familiar with its resources and its capacity to operate in the way planned; and, also, assures an official study and investigation of the plan by the bank commissioner, a state official designated to approve or disapprove the plan in the exercise of a sound discretion. Thus the problem of reorganization is first formulated by the board of directors and then submitted to every interest, with the power of one-third in interest of those affected to defeat the proposal. The method is simply an extension of the principle in corporate affairs that the majority decides and rules."

And again the Court said:

"The provisions of the section contemplate a reasonable exercise of power conferred, and afford no sound basis for objection on constitutional grounds."

Nebraska also in 1929 adopted an amendment to the state banking laws authorizing reorganization of banks which had been taken over for liquidation. This statute has been construed by the Supreme Court of Nebraska in the case of *Barber v. Bryan*, 123 Neb. 566, 243 N. W. 834. In that case, the Supreme Court of Nebraska held that an insolvent state bank, closed by the department of trade and commerce, may be reorganized and reopened at the instance of creditors holding 85% in amount of the claims against it, and that the agreement entered into by such percentage of creditors is binding on the non-consenting creditors.

Our examination has not disclosed statutes of a like kind enacted by any states other than those heretofore discussed, and in each of the states having such statutes the courts of last resort have upheld them as against the identical attack as is made here against the Mississippi statute.

Our own court has upheld a statute regulating banks which more nearly impaired the obligation of contract than does Chapter 251, Laws of 1932. In the case of *Love v. Mangum*, 160 Miss. 590, 135 So. 223, suit was brought against Love, as Liquidator in the insolvent D'Lo Guaranty Bank, seeking to compel him to issue to Mangum an interest bearing guaranty certificate for the amount of his deposit, as provided by law before the enactment of Chapter 22 of the Laws of 1930, instead of a non-interest bearing certificate as provided by that statute. Mangum claimed that the Act of 1930 impaired the obligation of a contract and deprived him of a vested right to the issuance of an interest bearing guaranty certificate. The Court, after approving the holding in the cases of *Abie State Bank v. Weaver*, 282 U.

S. 765, 75 L. Ed. 690, and *State v. Smith, State Superintendent of Banks,* 234 N. W. 764 (S. Dak.) said in conclusion:

> "Both the old and the new bank guaranty statutes are mere police regulations; under them appellant acquired no contract rights, either with the state, or with the other state banks. Neither, for the same reason, did he acquire any vested right under the old statute which was in anywise taken away from him by the new statute."

So, for the same reason we earnestly contend that Chapter 251, Laws of 1932, took away from the appellants no rights vested in them under the old law, and that they had no contract which is impaired by the statute in question.

Although the Congress is not inhibited by certain constitutional provisions that apply to state legislation, yet, the fact that the Congress of the United States enacted a law very similar in its provisions to the Mississippi statute controlling reorganization of national banking associations (Act March 9, 1933, Section 207, as amended by acts of May 20, 1933), makes manifest that the provisions in the Mississippi statute contained, are reasonable and just, and not arbitrary and without reasonable relation to the end sought to be attained. That the Congress and the legislatures of various states have seen fit to enact similar laws for the reopening of closed banks, is a potent argument not only for the public necessity for such legislation, but also that conditions existed throughout the country giving occasion for the exercise of the police power of the legislature in the promotion of the public welfare.

Not only does Chapter 251 of the Laws of 1932 promote the common welfare by providing a method of reopening banks, and thereby ridding communities of the depressing effect thereon of a closed bank, but it also illustrates the exercise of the police power reposing always in the state. The effective exercise of this power to attain an end which is to the best interest of all creditors of a like class in a bank, may not be frustrated by a small minority who dissent for no valid reason, but claim certain abstract rights which, under existing conditions, can never be realized. The law gives to the dissenters protection from improvident and inequitable schemes by requiring that the plan of reopening shall first be approved by 75% of the depositors, and next by the Superintendent of Banks, and then by the Chancellor, after the plan and all the facts have been laid before him. The law protects the minority, but at the same time it also protects the 75% majority who are equally entitled to protection in their rights. No plan of reorganization could ever be worked out where the assent of all depositors had to be secured. It is to be remembered that this was a proceeding instituted by 75% of the depositors, and then formally presented to the Chancery Court by the Superintendent of Banks, a state officer representing the people of the state, and as liquidator of the bank representing creditors and depositors. It was not a proceeding on the part of the old bank to scale down its debts as appellants would make it appear. The bank was not a party to the proceeding which was essentially one *in rem*. The petition was filed by the Superintendent of Banks and a supporting petition was filed by the depositors' committee asking that the plan of reorganization be approved. Nowhere in the record does it appear that the bank asked any relief.

Can it be said that a Sovereign State can be prevented from acting for the public welfare and the best interest of the whole of the creditors because a private contract may be alleged to be impaired thereby? It has long been held that the state may not be restricted in the exercise of its power because of some private contract becoming incidentally affected thereby. The opinion of the Mississippi Supreme Court in this case well answers this in the following language:

> "And to say that so long as a minority, however small, objects, no arrangement may be made by which the stockholders statutory liability may be transmuted into another form of substantial assurance, given upon fair and reasonable consideration furnished in the arrangement by the particular stockholders immediately concerned, and producing greater benefits to the depositors, and that no law can so contemplate or authorize, although passed in the vital interest of public welfare, and for the distinct good of the greater number of those in immediate beneficial interest, would be to deny the right of the state to legislate in a reasonable and practical manner in respect to matters even of a public nature, and of a distinctly public concern, because there may be a formal intrusion thereby upon the literal terms of the constitutional provisions in reference to the impairment of contracts . . . In considering the constitutional guaranty against impairment of contract, courts now definitely look to substance rather than to form,—realization upon the value or worth of the contract is the concern of the guaranty, not that any particular method for that realization will be observed or preserved." (R-114.)

IV.

CHAPTER 251 OF THE LAWS OF 1932 WAS DECLARATORY OF POWER INHERENT IN THE CHANCERY COURT.

While Chapter 251 of the Laws of 1932 is the basis for the decree in this case, it may not be successfully challenged as unconstitutional legislation, for it is but a legislative declaration of power already and always inherent in Courts of Chancery since their first development.

When the bank was placed in liquidation under the jurisdiction of the Chancery Court it was in virtual receivership and the Court had the right to exercise all the powers that a court of equity might exercise in a receivership pending before it. As hereinabove stated upon the closing of the bank the depositors lost their individuality and became members of a class. From that time on the Superintendent of Banks was the Receiver or Trustee of the assets of the bank for the benefit of all the creditors and depositors as a class and the creditors became the *cestui que trustents.* In discussing a similar statute the Supreme Court of Florida in the case of *Becker v. Amos,* 105 Fla. 231, 141 So. 136, uses the following language:

> "The act is subject to the construction, that the assets of said bank as of the time of 'freezing' are assets held by the Comptroller for the benefit of the creditors of said bank, who thereupon became and are the *cestui que trustents;* that the Comptroller as trustee has the option of administering said trusts fund for the benefit of the beneficiaries, himself through his liquidator, or might surrender the bank upon conditions as might be approved by him,

and in the event petition and consent in writing of those persons representing 75% of the total depositors of said bank, should order all deposits frozen upon such terms and conditions as he may fix; thereupon, instead of him, the Comptroller, the bank itself would become the administrator of said trust estate ..... "

While this refers to the 75% Law the relation existing between the Comptroller, (in Mississippi the Superintendent of Banks) and the depositors is the relation which was created when the bank closed and was placed under the jurisdiction of the Court for liquidation. As stated by the Court in the *Christensen case,* supra, authority to act must be vested in some person and the Legislature has seen fit "to confer upon the Superintendent of Banks and the Chancery Court the discretion and judgment to take such action as under such discretion would best promote the general welfare." The purpose of the law providing for liquidation, which was largely Section 3817, was to place the assets of insolvent banks beyond procedure by individual action and put authority to act in a designated officer. It was the purpose of the law in providing for liquidation that all acts thenceforth should be for the benefit of the creditors as a class and to prevent creditors from seeking individual advantage. Section 3817 gave the right to the Superintendent of Banks with the approval of the Court to sell and dispose of property of the bank. This was construed in the *Christensen case,* supra, as giving the Superintendent of Banks and the Court the right to sell the assets in whole or in part, which has been discussed hereinabove. It cannot be doubted that there was carried with the rights covered by Section 3817 the power for all settlements and dealings with reference to the

assets of the insolvent bank as might best promote the interest of its creditors. The Superintendent of Banks, with the approval of the Court, had the right under this section to make settlement with a debtor on a compromise basis. If this were not so the liquidator could only collect the debt in full or not at all. A great many of the assets would be worthless because it must needs be that many of the assets were not wholly good, else the bank would not have been insolvent. If the Superintendent of Banks and the Court had the right to act in individual cases to do that which would promote the best interests of the creditors as a whole, it must follow that they would have the right to do the same thing on a larger scale; and if an arrangement could be made whereby more would be realized out of the assets for the creditors than would be realized from forced liquidation, it would be a reproach to the law that the authority set up by the Legislature and vested with judgment and discretion should be powerless to do that which was to the best interest of its *cestui que trustents* and would be confined to the less desirable method of forced liquidation.

In the administration of a receivership under its jurisdiction a court of equity has the inherent power to do that which is to the best interest of all of the creditors interested in the receivership and affected thereby. Really Chapter 251 of the Laws of 1932 is but a Legislative declaration of this power. The Court had the power before Chapter 251 was enacted. This is demonstrated by the decision of the Court in the *Christensen case,* supra, in which the transfer of assets occuring prior to the enactment of Chapter 251 was upheld as valid.

The power to administer receiverships for the best interest of the creditors has always reposed in the courts of equity. In the early days, the occasion for the exercise of such power never arose because there had not been such a development of human relations to call for it. The fullest expression of this power is found in the exceptionally well reasoned case of *Phipps v. Chicago R. I. & P. Co.*, 284 Fed. 945, 28 A. L. R. 1184, in which Justice Sanborn of the Eighth Circuit Court of Appeals cuts through form and decrees that which is equity and which best promotes the interest of the creditors concerned. In that case it was held that a Court which through its receiver takes possession of an insolvent Railroad corporation may compel unsecured creditors to submit to a plan of reorganization by which they will receive their fair share of the property of the corporation in stock and turn the property back to the reorganized company without resorting to a judicial sale and restrain the creditors from resorting to any other method of collecting their claims. In that case a Railroad company with a large amount of indebtedness was placed in the hands of a Receiver. A reorganization was projected to which a large per cent of the creditors, secured and unsecured, and stockholders agreed, and in the reorganization plan it was represented to the Court that it should decree the delivery of the property back to the corporation, reorganized according to the plan without judicial sale and protect the reorganized company and its property against liability to pay in full in cash claims of unsecured creditors who should decline to agree to the plan. In the statement of facts prepared by Judge Sanborn himself, it was said "after careful consideration the Court concluded that it had the power and that it was its duty

so to do, and rendered its decree to that effect." In the opinion of the Court, Judge Sanborn treats the common creditors as *cestui que trustents* of the Court as we have argued hereinabove. In the opinion he reviews the progress of the law through the courts relative to such insolvent corporations and receiverships, citing a number of leading cases and shows that reorganization efforts were first undertaken through judicial sales, but traces the progress of the law to show that the Court was not restricted to a judicial sale to secure the most equitable and beneficial results for its *cestui que trustents*. As a matter of fact it shows that the main consideration was the securing of that which was best for the creditors, and unless this was done even the fixing of a judicial sale was unavailing. The substance of this decision is expressed in the following language:

> "That in the foreclosure cases the courts proceeded by sales, as we have seen, added nothing to the validity of or effect of their decrees, or of the title they transferred to the purchasers. That the Courts in the foreclosure cases transferred the properties to new corporations, which the creditors and stockholders of the insolvent corporation through their stocks and bonds of the new corporation which they received for their equitable shares in the property of the old corporations, owned, possessed, controlled, and directed, while the courts in the case in hand delivered the property they administered back to the empty shell of the former insolvent corporation so reorganized as to be solvent, which solvent corporation the creditors and stockholders of the insolvent corporation owned, possessed and controlled through the stock of that reorganized corporation, which they received for their equitable

shares in the property in the insolvent corporation is an immaterial difference. The courts in this case had the same power to vest in the reorganized solvent corporation the title to the property of the insolvent corporation, free from the claims against and stock in the latter, and to bar actions and suits against the reorganized corporation and against the property they delivered to that corporation that the courts in the foreclosed cases had and exercised to protect the new corporations and the property which they delivered to them against like claims. And the conclusion of the whole matter is that the decree of the, United States District Court of the Northern District of Illinois, whereby that court adjudged that the property of the insolvent company should be delivered back to that corporation so reorganized as to be solvent without a sale, and that the unsecured creditors and stockholders of the insolvent company were enjoined and forever barred from interfering with or maintaining claims, actions or suits against the property so delivered or against the reorganized company, on account of such claims against or stock in the old insolvent corporation, in any other way than that specified in that decree was far within the jurisdiction and power of that court and was fair, equitable and just."

This decision has furnished the rule which has been followed in a number of other reorganizations.

If a Railroad company, in receivership, can be reorganized by surrendering the property of an insolvent corporation to a reorganized solvent corporation in which the creditors benefit on the basis of their claims, a *fortiori*, a court of equity in which an insolvent bank is being liquidated has the inherent power to direct the

return of its assets to a reorganized bank with additional capital upon a plan whereby all of the assets of the bank are to be liquidated by it and paid over to the creditors pro rata, and especially when it is shown to the Court that the creditors will receive more in this way than they would receive by forced liquidation. The Court has the right when convinced that it is to the best interest of all to bind all by its action in so doing. Unless it can do this, it has lost some of its original and inherent power. If it is to be checkmated in doing that which is to the best interest of the creditors as a whole by the dissent of a few, the purpose of putting the liquidation under its jurisdiction is largely frustrated. All creditors are in a court of equity and it has ample power to force them to do equity and thereby prevent individuals from defeating a plan for the best interest of all.

The Supreme Court of Mississippi held in the *Christensen case*, supra, that the Superintendent of Banks, with court approval, had the right to sell the assets of the bank in liquidation to a reorganized bank to operate under another charter. Following the rule announced by Judge Sanborn in the case of *Phipps v. Chicago R. I. & P. Co.*, supra, the Court had ample power to decree the return of the assets of the insolvent bank to a reorganized, solvent bank under the old charter under a plan whereby the creditors would receive the full benefit of all the assets of the old bank. And the Supreme Court of Mississippi in the decision in the case at bar held that what occurred in the *Christensen Case*, supra, was in effect a reorganization proceeding. And this in full view of the fact that in the *Christensen case* the transfer was to a bank with separate corporate franchise.

Leaving out of view the so-called pooled assets, including $90,000.00 stock liability, which were left in trust for the benefit of all depositors, when we look through form to substance what was effected by the decree was the sale of the assets of the liquidation including stockholders liability at a fair price to a new reorganized and solvent corporation with a new capital structure provided in cash by its stockholders, which corporation took up its abode in the empty shell of the old and insolvent corporation and assumed its corporate name.

V.

APPELLANTS WERE NOT DEPRIVED OF DUE PROCESS OF LAW.

There is in this case no basis for the objections that appellants were denied due process of law, nor that their property was taken without due process of law. The requirements of the United States Constitution were fully met in the proceeding which is before this Court for review.

In the case of *Hardware Mutual Fire Insurance Company v. Glidden*, 284 U. S. 151-158, 76 L. Ed. 214, 219, the Supreme Court of the United States held:

> "The 14th Amendment neither implies that all trials must be by jury, nor guarantees any particular form or method of state procedure . . . . . In the exercise of that power and to satisfy a public need, a state may choose the remedy best adapted, in the legislative judgment, to protect the interests concerned, provided its choice is not unreasonable or arbitrary, and the procedure it adops satisfies the Constitutional requirements of 'reasonable notice and opportunity to be heard.'"

And in the case of *Snyder v. Mass.*, 291 U. S. 97, 78 L. Ed. 674, which was a criminal case, the Court held:

> "What may not be taken away is notice of the charge and an adequate opportunity to be heard in defense of it."

We respectfully submit that when these two requirements of notice and opportunity to be heard were met, the United States Constitution was complied with, and the manner of notice, and the procedure on the hearing were matters to be settled by the Supreme Court of Mississippi, and having done so these matters will not be reviewed in this Court.

This was a proceeding in the matter of the receivership of the closed bank before the Court in which it was pending. That the Court had jurisdiction over the subject matter is not, and cannot, be questioned. It was not a proceeding directly against these appellants, or any other creditor, for the recovery of money, or property, from them, but a proceeding with reference to the assets in which they were beneficially interested, the legal title to which was in the Superintendent of Banks. Except as to amounts on which they might receive dividends, the rights of these appellants were the same as all other creditors. The matter before the Court was the disposition of the assets in a particular way, and was to affect these appellants, and all creditors, alike. The question before the Court was whether or not the plan submitted was for the best interest of all creditors. The receivership had been pending before the Court for more than two years, and appellants had notice thereof and were parties thereto. Before proceeding in the matter the Court selected certain creditors, fifteen in number, out of a total of five thousand, as rep-

resentatives of the creditors as a class, and directed that process be served upon them to appear at the hearing and show cause why the plan agreed upon by the three-fourths majority should not be approved. (Record 22-23). The creditors selected consisted of individuals and corporations, and were a fair cross section of the whole. This was the only practical method of process. To have personally served each of the five thousand creditors would have entailed enormous costs and delay and would have been too cumbersome for reasonable procedure by the Court. Furthermore, the rights of the creditors were the same, and the objections of the few would embrace those of all. Such practice of bringing all parties before the Court by such service has been recognized and followed in the courts of equity both in this country and in England for several hundred years. This rule was clearly recognized by the Supreme Court of the United States in the case of *Wallace v. Adams*, 204 U. S. 414, 51 L. Ed. 547, wherein the Court used the following language:

> "Now, it is undoubtedly within the rights of the court of equity to name as defendants a few individuals who are, in fact, the representatives of the larger class having a common interest and common right, a class too large to be brought into court, and make the decree effective not merely upon these individuals, but also upon the class represented by them." Citing *Mandeville v. Riggs*, 2 Pet. 482, 7 L. Ed. 493, and numbers of other cases.

In addition to such service on the designated creditors personally, the Court further ordered that publication of notice be made for all depositors, creditors and parties in interest, directing them to appear at the hear-

ing, and show cause why the plan should not be adopted. This publication was made, and proof of it appears on pages 23-24 of the Record.

Appellant Doty was served with process, appeared at the hearing, and filed objections. Appellant McCarty was not personally served, but voluntarily appeared and was granted leave to file objections, and their objections were later consolidated. The record shows, page 68, that these parties were represented by counsel at the hearing, and that the matter was heard by agreement of the parties. It further shows that these parties participated in the hearing, and in the examination of the witnesses. The decree shows that they were accorded full opportunity to present evidence in support of their objections, but that they offered none. (Record 46).

In the *Christensen case*, supra, a disposition of the assets of the liquidation on similar terms was made, but without any notice to creditors, or, so far as the record shows, any open hearing, and the Supreme Court of Mississippi sustained the proceeding as valid. In the case at bar the Supreme Court of Mississippi held that all requirements as to notice were well enough observed in the following language:

> "In receivership and in liquidation, such as this, the Court acts in all ordinary administration matters upon *ex parte* petition or motion and without formal notice to the parties in interest. This is a rule of necessity, because usually in these matters there are numerous parties in interest widely scattered, and to require notice of every step to be taken would hinder and embarrass the administration and entangle it in unbearable expense. In matters of great importance, however, vitally affect-

ing the body of the estate, notice by citation ought to be given, and in some jurisdictions the citation is regarded as essential to the validity of the decree in these more important steps in the administration. In *Milner v. Gibson*, 61 S. W. (2nd) 273, it was held, however, that notice was not essential under a reorganization petition in bank liquidation proceedings; and in *Christensen v. Marine Bank*, 150 So. 375, which was in effect a reorganization proceeding, no notice was given. But whether citation under our reorganization statute is required, we are not called on here to decide, because proper citation was in fact ordered and served in the present case; it being necessary to add only that a citation is not required to be served either with the same formality or for the same length of time as a summons. The requirement in respect to a citation is that it be served in a reasonable manner, and for a reasonable length of time, all the circumstances considered, and that requirement was well enough observed in the matter now before us." (R-111.)

VI.

APPELLANTS HAVE NOT SUFFERED ANY DAMAGES.

The appeal in this case, taken without supersedeas, is from a judgment of the Supreme Court of Mississippi affirming a decree of the Chancery Court of Lee County, Mississippi, entered May 17, 1933. The appeal to the Supreme Court of Mississippi was likewise without supersedeas; and upon the entry of the decree in the said Chancery Court it became effective, and the Peoples Bank & Trust Company, as reorganized under the

terms of said decree, was then and thereafter authorized to reopen and proceed under the plan set forth in the decree of the Court. The presumption is that the decree has been executed.

Since that time, Chapter 146 of the Laws of Mississippi, 1934, of which this Court will take judicial notice, has been enacted. This act created a department of bank supervision, and the office of State Comptroller; abolished the State Banking Department and the office of State Superintendent of Banks.

The appellants seek to have reversed a decree which has been effective for almost two years, and to obtain redress against the appellee whose office has been abolished. In order that this may be done, and for the appellants to have standing in court on the claimed invasion of their constitutional rights, the record must show that, by the statute assailed and the decree entered, they have suffered actual damage.

The original petition filed in the liquidation proceedings in the Chancery Court of Lee County, Mississippi, the proof thereon, and the decree of the Chancery Court, make manifest the correctness of the holding in this case made by the Supreme Court of Mississippi that the appellants have not been damaged by reason of the entry of the decree. The opinion of the Supreme Court of Mississippi (R-115) definitely finds that the appellants have not been hurt, or damaged, in any way. And if one has not been damaged he may not complain, whether he base his complaint upon constitutional, statutory, or other grounds. We quote from the opinion of the Supreme Court of Mississippi in this case, as follows:

"We say finally, therefore, of the discussion upon the question of stockholders' liability, and we may have likewise so answered as to the entire of this controversy upon the merits without any elaboration of discussion, that unless the complaining depositor can show that he has been substantially injured in ultimate results, has in fact been actually hurt by the reorganization and the plan thereof, he has no right to complain whether upon constitutional or statutory or administrative grounds.

"It is fundamental in all our laws of Chancery procedure that before any person may complain or sue in any equity court, he must set up a cause of action of which an essential element is that he must show that he has been injured, that what has been done results in actual harm to him; *Federal Land Bank v. Miss. P. & L. Co.*, 157 Miss. 737; and the like rule applies to all those who object to what has been done in any given situation, whether in the Chancery Court or on appeal. This elemental rule fully applies also upon constitutional contentions, as was expressly recognized by this Court in *New Orleans M. & C. R. Co. v. State*, 110 Miss. 290, 305, the Court there having under consideration a constitutional question, and wherein having stated the general rule, as above mentioned, the Court summarized it in the terse expression that, 'one must be hurt before he complains.' The petition in the case now before us showed, the evidence established, and the Court adjudged, that the plan and its execution would result in a substantially greater benefit to the five thousand depositors, of whom only two are the appellants here, than had the plan not been adopted. And the case being, therefore, that

the appellants are not hurt or injured in any substantial way, it follows that they are not in a position to complain."

On the question of whether appellants have been damaged the plan as a whole must be looked to and considered. An apparent damage in one particular aspect of the plan may be more than overbalanced by the advantages accruing from other features of the plan. To illustrate: Any loss that may have been suffered by reason of the compromise settlement embraced in the plan as to stockholders' liability, according to the testimony and the finding of the trial court, is more than off-set by the added value given to the bills receivable, and real estate, and other property owned by the liquidation, and to which alone the appellants were compelled to look for repayment in whole, or in part, of their respective deposits. And the fact that actual damage must be shown before appellants may complain on any ground is discussed in the decision of the Supreme Court of the United States in the case of *John M. Petry v. United States*, (Feb. 18, 1935) 79 L. Ed. 446, (not yet officially reported), wherein the court held that before the plaintiff could recover he must show actual damages. And again in the same decision in discussing the question of whether plaintiff had shown any damages the Court said: "Plaintiff's damages could not be assessed without regard to the internal economy of the country at the time the alleged breach occurred."

In the plan of reorganization of the Peoples Bank & Trust Company, and in the testimony in support of the decree, the Chancery Court had before it, and in determining whether the plan was best for all depositors,

including the appellants, and in deciding whether any depositor would be damaged by the plan, gave regard to the economic conditions in the territory in which the closed bank was located, and the effect of the plan, and the carrying of it into execution on the values of all of the properties owned by the liquidation. On ample testimony, which is wholly without contradiction, the Court found that the plan would be without detriment to any depositor, but on the contrary would be of substantial benefit to all creditors of the bank.

It is a matter of common knowledge that identical assets owned by an open and going concern are more valuable than if owned by a business in liquidation. As was stated by the Supreme Court of Mississippi in the *Christensen case*, supra:

> "It is difficult to collect the assets of a bank in liquidation. It is well known that many obligations due a bank are more easily collected when the bank is a going concern, open and doing business, than when it is done by a liquidating agent or receiver. Liquidation proceedings are highly expensive, and the amounts received by creditors and depositors are usually less than the full demands. In other words, it is the usual thing, in liquidation proceedings, for its stockholders and creditors to suffer losses."

Therefore, we confidently assert that no damage has been shown by the appellants and they are not in position to challenge either the statute or the decree.

CONCLUSION.

WHEREFORE, we respectfully submit that the judgment appealed from should be affirmed.

Respectfully submitted,

C. RICHARD BOLTON,
CLYDE L. HESTER,
HIRAM H. CREEKMORE.

We certify that we have this day personally delivered copies of the foregoing brief to E. C. Sharp and Charles S. Mitchell, Attorneys for the Appellants.

This ..... day of March, 1935.

C. RICHARD BOLTON,
CLYDE L. HESTER,
HIRAM H. CREEKMORE.
Attorneys for Appellee.

APPENDIX "A"

"3817. Liquidation proceedings.—In liquidating the affairs of insolvent state banks taken over by him, the superintendent of banks shall proceed by first filing a petition in the chancery court of the county in which the bank is located, submitting the liquidation of such bank to the jurisdiction of that court and thereafter the liquidation shall proceed under the orders and directions of that court. The chancery court or the chancellor in vacation shall have full jurisdiction to make any and all orders in the course of the liquidation proceedings. The case shall be styled "In the matter of the liquidation of the * * * bank by * * * superintendent of banks," and when the board of directors of the failed bank have passed a resolution consenting to the liquidation of the bank, and requesting the superintendent of banks to take charge of its affairs for the purpose of such liquidation and authorizing an officer of the bank to waive service of process and enter the appearance of the bank to the petition, the superintendent of banks shall thereafter have full and complete control and authority over the assets and affairs of the failed bank, subject only to the orders of the chancery court to which jurisdiction of the liquidation has been submitted. Suit may be instituted by him in his name as superintendent of banks to enforce the collection of any bill or other obligation due the failed bank or to preserve the assets thereof or to enforce any right at law or in equity that might or could have been enforced by the bank as a going concern. And he may employ and retain such of the employees of the bank as he may deem necessary to aid him in the liquidation. By and with the consent of the court or of the chancellor in vacation evidenced by an order entered in the liquidation proceedings he may sell any of the property, real,

personal or mixed, belonging to the bank either at private or public sale, and a deed made by him under the seal and attested by the secretary of the state banking department shall convey to the purchaser all of the rights, title and interest of the bank and of the state banking department in any such property.

"The superintendent shall cause notice to be given by advertisement in such newspaper as he may direct, once a week for six consecutive weeks, calling on all persons who may have claims against the bank (but not including deposits shown by the books of the bank which shall *prima facie* be proven claims) to present the same and make legal proof thereof, at a place and within a time specified in such notice, not less than ninety days from the date of the first publication of the notice. A copy of the notice shall be mailed to all persons whose names appear as creditors on the books of the bank. If the superintendent doubts the justice and validity of any claims or deposits, he may reject the same and serve notice of such rejection upon the claimant or depositor, either by mail or personally, and an affidavit of service of such notice, which shall be *prima facie* evidence thereof, shall be filed in the office of the banking department. An action upon a claim so rejected must be brought by petition to the chancery court having jurisdiction of the liquidation of the affairs of the bank by the claimant within six months after such service or the same shall be barred. Claims presented and allowed after the expiration of the time, fixed in the notice to creditors, shall be entitled to share in the distribution, only to the extent of the assets in the hands of the superintendent at the time claims are filed, without allowance for previous distribution. Upon taking possession of the property and assets of a bank, the superintendent shall make

an inventory of its assets in duplicate, one to be filed in the office of the banking department, and one in the liquidation proceedings in the chancery court. Upon expiration of the time fixed for the presentation of claims, the superintendent shall make in duplicate a full and complete list of the claims presented, including and specifying which claims have been rejected by him, one to be filed in the office of the banking department and one in the liquidation proceedings in the chancery court. Such inventory and list of claims shall be open at all reasonable times to inspection. The compensation of the special agents of the banking department, counsel and other employees and assistants and all expenses of supervision and liquidation shall be fixed by the superintendent subject to the approval of the chancery court, or the chancellor in vacation. When the compensation for the various parties aiding in the liquidation is fixed and approved the same shall be paid out of the funds of such bank in the hands of the superintendent and shall be a prior charge and lien on such assets. The money collected by the superintendent shall be, from time to time, deposited in one or more state depositories. At any time after the expiration of the date fixed for the presentation of claims, the superintendent may, out of funds remaining in his hands, after the payment of expenses, declare and pay one or more dividends to creditors, and as soon as practicable thereafter, he shall declare and pay a final dividend, such dividend, to be paid to such persons and in such amounts and upon such notice as may be directed by the chancery court having jurisdiction of the liquidation. Objections to any claims or deposits not rejected by the superintendent may be made by any party interested, by filing a copy of such objections with the superintendent, who shall present

the same to the court having jurisdiction before the time of the next application to declare a dividend. The court may make proper provisions for unproven or unclaimed deposits. When the superintendent shall have paid to each and every depositor and creditor of such bank whose claim or claims shall have been duly proven and allowed, the full amount thereof, and shall have made proper provisions for unclaimed and unpaid deposits, or dividends, and shall have paid all the expenses of liquidation, all out of the assets of the failed bank, and there still remains in his hands any assets thereof, he shall call a meeting of the stockholders of such bank by giving thirty days' notice by publication once a week for three consecutive weeks in one or more newspapers published in the county where the principal office of such bank was located. At such meeting the stockholders shall elect by ballot an agent or agents who shall wind up the affairs of the bank, and in so determining such stockholders shall vote by ballot, in person or by proxy each share of stock entitling the holder to one vote and the majority vote of the stock shall be necessary to an election, a majority of the stock present and voting in person or by proxy being necessary. Such agent or agents shall execute and file with the banking department a bond in such amount with such security and in such form as shall be approved by the superintendent of banks conditioned for the faithful performance of all the duties of his or their trust, and so conditioned that any party aggrieved may bring or cause to be brought suit on said bond, and thereupon the superintendent shall transfer and deliver to such agent or agents all the undivided and uncollected or other assets of such corporation then remaining in his hands and take a receipt therefor signed by such agent or agents, and upon such

transfer and delivery shall be discharged from any and all further liability to the bank and its creditors. Such agent or agents shall convert the assets coming into his or their possession into cash, and shall act for and make distribution of the property of said bank as is herein provided in case of distribution by the banking department, except that the expense thereof shall be subject to the direction and control of the court having jurisdiction of the cause. In case of the death, removal or refusal to act of any such agent or agents selected by the stockholders the stockholders, on the same notice to be given by the superintendent upon proof of such death, removal or refusal to act, being filed with him, and by the same vote hereinbefore provided, may elect a successor who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected. Dividends and unclaimed deposits remaining unpaid in the hands of the banking department for six months after the order for final distribution (at such rate of interest as is allowed by said state depositories) shall be by him deposited in one or more state depositories to the credit of the banking department in trust for the several depositors in and creditors of the liquidated bank from which they were received, and the superintendent shall pay over the money so held by him to the persons respectively entitled thereto upon being furnished satisfactory evidence of their rights to same. In case of doubtful or conflicting claims, he may require an order from the court having jurisdiction authorizing and directing the payment thereof. He may apply the interest earned by the money so held by him toward defraying the expense in the payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive the same. The banking

department shall file annually with the governor of this state a report of the names of the banks taken possession of and liquidated and the sum of unclaimed and unpaid deposits or dividends with respect to each of them respectively, together with a statement of the amount of interest earned by such unclaimed dividends, which reports the governor must submit to the legislature.

"In event the assets of the failed bank are not sufficient to pay the claims of all creditors and depositors in full, then in such event, when the superintendent shall have realized on all of the assets of such bank, and has applied the same toward the payment of such claims in the manner provided by law, he may file with the chancery court having jurisdiction of the liquidation a final report and upon the approval and allowance of this report he shall be discharged from any further liability to the bank and its creditors, except as to the right of depositors to be paid any remaining balance due them out of the guaranty fund as provided by law."

APPENDIX "B."

In the statement of facts by appellants to which reference has heretofore been made, a claim is made that there is a loss of $152,485.90 in assets between the total assets shown on the liquidation statement and the total assets shown in the pool account and in the reopened bank. This is a mere difference in the manner of presenting said statements, and is not in fact a discrepancy of real assets as charged by the appellants.

It will be noted that the statement on page 21 of the Record which shows assets of $1,901,672.92 shows an item of taxes and expenses of all kinds aggregating $109,855.87 as an asset, which, of course, is not an asset

except for the purpose of bookkeeping. This $109,855.87 has been eliminated from the statement on page 21, and on page 24, column 1, will be found a statement after the elimination of the $109,855.87 item. This statement in column 1, on page 24, shows assets of $1,791,817.05, which is exactly $109,855.87 less than shown on page 21. All figures on both statements are the same except that for $109,855.87, taxes and other expenses is eliminated on the assets side, and there is also eliminated from the liability side of the same statement Earnings Account of $87,928.79, which leaves a difference of $21,927.08, between the Earnings and Expense Accounts, which $21,927.08 has been eliminated from the Margin Account, which Margin Account in column 1, on page 24, is this amount less than the amount at which it is carried on page 21. Therefore, this accounts for $109,855.87 of the so-called $152,485.90 discrepancy.

The balance of the so-called discrepancy of $42,630.03, which is the difference between the $152,485.90 and the $109,855.87, which has already been accounted for, is accounted for as follows:

First, $55,000.00 is eliminated from the stockholders' liability account on account of the fact that under the reopening plan of the bank stockholders who paid in 50% of their stock liability to provide capital for the reopened bank were released from the other 50%, which fact is fully set out in the testimony in the record and in the decree authorizing the reopening of the bank. This $55,000.00 added to $109,855.87, above referred to, would make a difference of $164,855.87, whereas, the net difference is only $152,485.90, making an average of approximately $12,500.00, according to appellants' figures, but as a matter of fact there is no overage and this

difference is accounted for by additions to the Loans and Discounts Account, Bond Account, Real Estate Account and Cash Account, which additions aggregate $40,284.97, and after giving effect to the reduction in the stock liability account of $27,975.91, gives an actual net increase in the assets of $12,309.06 as reflected in column 2, page 24, of the Record, which column reflects the statement of the liquidation after giving effect to the $55,000.00 collected for capital stock.

Totals of columns No. 3 and No. 4 should and will equal column No. 2 on page 24 if $55,000.00 is added to the total of these columns No. 3 and No. 4, which is the amount of the stock liability released, and after adding $60.86 to the Overdraft Account, page 24 of the Record, in column No. 4, shows Overdrafs of $4,041.94, which is evidently a typographical error. Same should show $4,101.94, which is $60.86 more than the Overdrafts shown in column 2; therefore, this $60.86 shows up in the difference in the totals of columns No. 3 and No. 4 against the total of column No. 2.

Reconcilement of the total of column No. 2 with the totals of columns No. 3 and No. 4 is as follows:

Column No. 2, total		$1,804,126.11
Column No. 3, total	$1,281,972.47	
Column No. 4, total	467,214.50	
Making total of columns No. 3 and No. 4 of	$1,749,186.97	
Plus amount released from Stock Liability Account referred to above	55,000.00	
Making total of		$1,804,186.97

Less Overdrafts increase referred to above..... 60.86

Making a total of Columns No. 3 and No. 4 of $1,804,126.11

which agrees with the total of this column set out on page No. 24 in the Record.

Therefore, the difference of $152,485.90 charged by appellants is accounted for.

17

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 585.

MRS. OSCAR C. DOTY, ET AL., *Appellants*,

vs.

J. S. LOVE, SUPERINTENDENT OF BANKS, *Appellee*.

SUPPLEMENTAL BRIEF OF APPELLEE.

C. RICHARD BOLTON,
CLYDE L. HESTER,
HIRAM H. CREEKMORE,
Attorneys for Appellee.

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INDEX

	Page
The Facts	1
Argument	3

CASES CITED

Gibbes vs. Zimmerman, 290 U. S. 326, 78th L. Ed. 342	3
Sunday Lake Iron Co. vs. Wakefield, 247 U. S. 350	5
National Surety Co. vs. Coreill, 289 U. S. 462	5

STATUTES CITED

Chapter 143 Laws 1932	4
Chapter 251 Laws 1932	4

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SUPPLEMENTAL BRIEF OF APPELLEE.

THE FACTS.

Since our original brief was written we have been served with copy of appellants' brief and in order that certain inaccuracies in appellants' statement of facts may be corrected, we shall refer briefly to the record.

On page 7 of appellants' brief it is said that personal service seems to have been obtained on three of the depositors. The fact is, as shown by record 45, being a finding of fact contained in the decree entered in the trial court, service of process was duly made upon each of the parties (15 in number), directed in the decree to be summoned as representatives of the depositors and creditors as a class.

On page 8 of appellants' brief the statement is made that

under the decree complained of deposits and claims under five dollars were to be paid in full. This is true, but the record 48 and 49 shows that the aggregate of said deposits is $3,649.87, in 4117 separate accounts averaging 87 cents each. And the record further shows that the trial court found as a fact that it would be more economical for all interested parties that said accounts should be paid in full, rather than carry them on the books of the bank and incur the expense of handling them.

On page 10 of appellants' brief is the statement that there was set over to the new bank all cash belonging to the bank in liquidation, as of May 1, 1933, amounting to $102,302.98. The fact is that of the money belonging to the bank in liquidation there was set over to the new bank $75,977.62. Record 52. The two items of money mentioned on record 52, to wit: $14,016.56 and $12,309.06, were not moneys of the bank in liquidation set over to the new bank, but the first item was money that never belonged to the bank in liquidation and the other item was money held in trust for special purposes with any surplus going, not to the new bank, but to the pool assets. Record 57.

On page 11 of appellants' brief the statement is made that the pool assets were held in trust for the new bank and administered under the jurisdiction of the Chancery Court of Lee County, Mississippi, with J. S. Love in charge of same as Agent of the Court, with no definite time stated as to when collections thereupon should be paid to creditors. The decree, Record 56, requires the new bank to make annual account of said trust to the Chancery Court of Lee County, Mississippi, and the Superintendent of Banks of the State of Mississippi was invested with authority to act for the benefit of the creditors interested in the trust, in requiring all things to be done that might be necessary for the safeguarding of their interests.

And also on page 11 of appellants' brief it is said that the new bank is to be reimbursed for all attorneys' fees and court costs expended in collecting the pool assets. The

decree, Record 56, provides that all such fees and costs must be approved by the Chancery Court of Lee County, Mississippi.

ARGUMENT.

In response to appellants' contention that they had a right to enforce their claims against the insolvent corporation in the manner provided by the laws in existence at the time of the making of the contract in question, we respectfully assert that this contention is contrary to the decision of this Court in the case of *Gibbes vs. Zimmerman*, 290 U. S. 326, 78th L. Ed. 342, wherein the Court says:

> "But although a vested cause of action is property and is protected from arbitrary interference (Pritchard vs. Norton, 106 U. S. 124, 132, 27 L. Ed. 104, 107, 1 S. Ct. 102) the appellant has no property in the constitutional sense in any particular form of remedy; all that he is guaranteed by the 14th Amendment is the preservation of his substantial right to redress by some effective procedure".

And again in that decision the Court says:

> "The substantive rights existing under the old law are preserved. In no proper sense can it be said that any property of the appellant has been taken, injured or destroyed."

All that appellants had, on the Peoples Bank & Trust Co. going into liquidation, was the right to their proportionate share of the assets in liquidation. Under the law and decree assailed, all their substantive rights and more are preserved to them. This is established by the findings in the decree by the Chancery Court and the language of the Supreme Court of Mississippi. Record 115..

On the question of notice given to appellants and other depositors of the bank in liquidation upon the filing of the petition by the State Superintendent of Banks, submitting to the Court for consideration the plan for reopening of

the bank, appellants on page 23 of their brief refer to chapter 143 of the Laws of the State of Mississippi 1932. They say this law relates to the setting of causes in chancery for hearing in vacation and the summons required to be issued to give notice to interested parties of such hearing. Full copy of this statute will be found on pages 122 and 123 of the Record. This statute was in force when chapter 251, Laws of 1932, was enacted. Chapter 143 was approved May 10, 1932, and chapter 251 May 18, 1932.

The proceeding for the reopening of the Peoples Bank & Trust Company under the provisions of said chapter 251 was a matter which by the terms of said chapter 251, the Chancellor was authorized by law to hear and decide in vacation. Therefore, as to notice thereof, said chapter 143, the law not otherwise expressly providing a method, furnished one way of giving notice of the hearing, if summons were necessary. And upon the designation by the Court of the time and place for the hearing and the naming of 15 depositors as representatives of the class upon whom process was to be served, and due service of process upon them, this statute was fully complied with. However, since the proceeding was in a receivership matter pending in the Chancery Court, no summons was necessary, and as held by the Supreme Court of Mississippi in this case no original process by way of summons was necessary and proper citation was in fact ordered and served. Record 110-111.

On page 24 of appellants' brief appears the statement that they were depositors in the defunct bank and were deprived of their property in the amount of several hundred thousand dollars. This is incorrect, as their combined deposits aggregate only $5,401.38, typewritten Record, pages 109-110.

The argument is made in appellants' brief that they have been denied equal protection of the law, because the assailed statute provides that correspondent banks, general creditors, are to be paid in full, while other creditors under the statute must accept such sum as 75 per cent of the

creditors may determine. And appellants say that the decree and judgment of the Court below is in a similar situation. When the petition for the reorganization of the People Bank & Trust Company was filed, no correspondent bank had any claim against it. Record 2 and 111. Therefore, no question may be raised thereon. And the decree complained of did not order cashier's checks paid in full, but put them on the same basis as other common creditors. Record 54. We have already discussed the direction of the decree (Record 48) as to payment of accounts under $5.00. In this connection, we further call attention to the language of this Court in the decision in *Sunday Lake Iron Co. vs. Wakefield*, 247 U. S. 350, cited by appellant, wherein it is said:

> "There must be something more (than errors of judgment)—something which in effect amounts to an intentional violation of the essential principle of practical uniformity".

Appellants say that the proceedings in the Chancery Court in the case at bar are in conflict with the requirements announced by this Court in *National Surety Co. v. Coreill*, 289 U. S., 462.

That case is easily distinguishable from the case at bar. It arose in a Federal District Court and came to this Court from a Circuit Court of Appeals. The case at bar arose in a District Chancery Court in Mississippi and comes to this Court from the Supreme Court of Mississippi. No questions are open here except those arising from claimed violation of constitutional rights and all matters of fact, upon adequate testimony, have been foreclosed.

And again, the entire record in the case at bar shows the plan and appellants' objections thereto were considered in an orderly way and the decree was based upon adequate data. The proceeding was instituted by the Superintendent of Banks, in reality the Receiver, and was by him recommended to the Court; it was approved by more than 75

per cent of the depositors in amount; detailed itemized statement of all assets and of all creditors were furnished; the depositors committee, which had been functioning for more than two years, joined in the petition and recommended it to the Court; testimony in support of the plan was heard from the liquidating agent, who had been in charge of the liquidation for more than two years, and from the representative of the State Banking Department, assigned especially by the Department to the investigation of the plan of reopening this particular bank; these witnesses were cross-examined by the appellant; and in addition, the proceeding was had in the Court in which the liquidation had been pending for more than two years and which had actual knowledge of all that had transpired relative to the liquidation and of which it took judicial notice without proof; and in this case there was not an outright sale, but a decree was carefully drawn, which required that if the assets were found to be worth more on realization than the sum at which they were set over to the new bank, such excess should go back into the pool for the benefit of all creditors. None of these characteristics of the plan under review here were present in the Coreill case.

Since the new bank was to get from the assets only a limited amount and the balance was to go into the pool for the benefit of all creditors, there was no necessity for an exact appraisal of the value of the assets.

Wherefore, we respectfully submit that the decree appealed from is correct and should be affirmed.

Respectfully submitted,

C. Richard Bolton,
Clyde L. Hester,
Hiram H. Creekmore,
Attorneys for Appellee.

We certify that we have this day personally delivered copies of the foregoing supplemental brief to E. C. Sharp and Charles S. Mitchell, Attorneys for Appellant.

This, the 6th day of March, 1935.

C. RICHARD BOLTON,
CLYDE L. HESTER,
HIRAM H. CREEKMORE,
Attorneys for Appellee.

18

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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 585

MRS. OSCAR C. DOTY, et al, *Appellants*,
vs.
J. S. LOVE, Superintendent of Banks of the State of Mississippi, *Appellee*.

Appeal from the Supreme Court of the State of Mississippi.

MOTION TO DISMISS APPEAL.

C. L. HESTER,
C. R. BOLTON,
H. H. CREEKMORE,
Attorneys for Appellee.

7

In the Supreme Court of the United States

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Appeal from the Supreme Court of the State of Mississippi.

MOTION TO DISMISS APPEAL.

Now comes the appellee, by his attorneys, and moves the Court to dismiss the appeal herein for the following reasons:

(1)

The citation to the appellee in this case was signed by the Chief Justice of the Supreme Court of Mississippi who was the Justice allowing the appeal, on November 5, 1934, and was returnable, in accordance with Rule 10 of the Supreme Court of the United States, within forty days from the said date (typewritten transcript page 234). The appellants did not docket the case, and file the record thereof, with the Clerk of the Supreme Court of the United States on or before the return day, in accordance with Rule Number 11 of the Supreme Court of the United States, but filed the record after the return day, to-wit: on December 19, 1934.

(2)

This cause is set for hearing for Thursday, March 7th, 1935. Counsel for appellants have not complied with Rule 27 of this Court, in that, they did not file with the Clerk at least three weeks before the case is called for hearing, forty copies of a printed brief, nor has any copy thereof been furnished to any of the counsel engaged upon the opposite side, and on this the

25th day of February, 1935, Counsel for appellants have not filed such brief, but are wholly in default under the provisions of said Rule 27 in relation to briefs and the time of filing same with the Clerk.

Respectfully submitted,

C. L. HESTER,
C. R. BOLTON,
H. H. CREEKMORE.
Attorneys for Appellee.

CERTIFICATE

I, H. H. Creekmore, one of the attorneys for appellee, certify that I have this day delivered in person a true copy of the above and foregoing motion to dismiss, to E. C. Sharp, one of the attorneys for the appellants.

This February 25, 1935.

H. H. CREEKMORE.

19

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APPELLEE'S BRIEF ON MOTION TO DISMISS APPEAL

C. L. HESTER,
C. R. BOLTON,
H. H. CREEKMORE,
Attorneys for Appellee.

In the Supreme Court of the United States

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APPELLEE'S BRIEF ON MOTION TO DISMISS APPEAL

The motion to dismiss the appeal in this case is based on failure on the part of the appellants to observe Rule 10 of this Court, and also failure to comply with the requirements of Rule 27 of the Court.

Rule 10 of the Court, paragraph 1, provides that the justice allowing the appeal shall sign a citation to the appellee, and make same returnable not exceeding forty days from the date of signing the citation. The record in this case shows (typewritten record 234) that the citation was signed November 5, 1934, and the filing date on the record itself shows that it was filed on December 19, 1934, which is more than forty days from the date the citation was signed. Rule 11 of the Court imposes upon the appellants the duty to docket the case and file the record with the Clerk, by or before, the return day. This rule also provides that if the appellants fail to comply with it the appellee may have the cause docketed, and the appeal dismissed, upon producing a certificate to the effect that the appeal has been duly allowed. Since the appellants in this case have filed the record with the Clerk, but after the return date, it is not thought necessary that any certificate as to the allowance of the appeal is necessary for the record so filed by the appellants shows the allowance of the appeal and the time thereof.

This case is to be called for hearing on Thursday, March 7th, and counsel for appellants have not yet filed any brief, and are thereby in default under the pro-

visions of Rule 27 of this Court. The first paragraph of this rule requires that counsel for appellants shall file with the Clerk at least three weeks before the case is called for hearing copies of a printed brief. On the day this brief is written only twelve days remain until the case will be called for hearing, and the appellee will be compelled to undertake to write a brief on the merits in the case without knowing what points and authorities the appellants will set forth in their brief. Since the appellants are in default under this rule, the appellee invokes paragraph 5 thereof which provides that when the appellant is in default under the rule, the Court may dismiss the case.

WHEREFORE, we respectfully submit that for the defaults of appellants the motion to dismiss the appeal should be allowed.

Respectfully submitted,

C. L. HESTER,
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H. H. CREEKMORE.
Attorneys for Appellee.

CERTIFICATE

I, H. H. Creekmore, one of the attorneys for appellee, hereby certify that I have this day delivered in person a true copy of the above and foregoing brief on motion to dismiss, to E. C. Sharp, one of the attorneys for the appellants.

This February 25, 1935.

H. H. CREEKMORE.

20

SUPREME COURT OF THE UNITED STATES.

No. 585.—October Term, 1934.

Mrs. Oscar C. Doty, et al., Appellants,
vs.
J. S. Love, Superintendent of Banks of the State of Mississippi, Appellee.

Appeal from the Supreme Court of the State of Mississippi.

[April 1, 1935.]

Mr. Justice Cardozo delivered the opinion of the Court.

A statute of Mississippi, adopted in 1932, permits the reopening of closed banks upon terms proposed by three-fourths of the creditors in number or in value if the plan is approved by the Superintendent of Banks and confirmed by the Court of Chancery. A bank has been reopened in accordance with this statute. The question is whether contractual rights have been impaired or rights of property annulled in contravention of the provisions of the Constitution of the United States.

The People's Bank & Trust Company of Tupelo, Mississippi, closed its doors on December 24, 1930. In accordance with the statutes then in force (Code of 1930, § 3817), the Superintendent of Banks took charge of the business and proceeded to liquidate it, his action being subject at all times to the supervision of the Court of Chancery. The bank owed about $200,000 for public moneys on deposit. These were preferred claims under the laws of Mississippi, and were paid in full. It owed for bills payable and rediscounts $457,500, amply secured by collateral. These also were paid in full, the security being unaffected by liquidation or insolvency. Out of the remaining assets, so far as they would serve, the liquidator would have to pay the general deposits (about $1,450,000) as well as any other debts. There was also available for the protection of depositors the personal liability of the shareholders to the extent of the par value of their shares, a liability which under the statute was to be "enforced in a suit at law or in equity by any such bank in process of liquidation, or by the superintendent of banks, or other officer succeeding to the legal rights of said bank." Mississippi Code, § 3815. The share capital of the bank was $200,000, and the personal liability of the shareholders

would have added a like amount to the assets if all the shareholders had paid in full.

In the fall of 1932, after about two years of liquidation by the Superintendent of Banks, a movement was started by a large number of depositors to set the bank upon its feet. For help in that endeavor, they had recourse to methods made available by a statute adopted in May, 1932, which is quoted in the margin.* Laws of

*"Section 1. Be it enacted by the Legislature of the State of Mississippi, That the Superintendent of Banks of the State of Mississippi be authorized to reopen any closed bank, with the approval of the chancery court of the county in which the bank is situated, or of the chancellor in vacation, when at least three-fourths of the general depositors and creditors therein, or any number of the general depositors and creditors therein provided they own at least three-fourths of the deposits in or claims against such bank, agree to the reopening thereof and sign what is commonly termed a 'freezing-of-deposits agreement', under which they agree to accept repayment of their deposits and claims over a period of years, for the full amount thereof or in reduced amounts, with or without interest, the period over which the deposits and claims are to be repaid and the rate of payment, together with the interest rate, if any, to be determined by the superintendent of banks, provided the superintendent of banks is convinced that such bank is in solvent condition and can repay the depositors the amounts of their deposits in accordance with the terms of the agreement for the repayment of same. But, before any such bank shall be reopened, the entire plan for the reopening of same, and all facts in connection therewith, shall be submitted by the superintendent of banks to the chancery court of the county in which the bank is situated, or to the chancellor in vacation, by proper petition, duly verified, such petition to contain a statement of the assets and liabilities of the bank and such other information as may be necessary to convey to the court or chancellor the true facts with reference to the condition of such bank, and a decree of the court or of the chancellor in vacation obtained approving the plan agreed upon for the reopening of such bank and authorizing the same to be reopened.

"Section 2. When any closed bank has been reopened as herein provided, the general depositors and creditors thereof who have not expressly agreed to accept the repayment of their deposits and claims in accordance with the freezing-of-deposits plan shall be bound to accept repayment of their deposits and claims on the same basis and at the same rate as those general depositors and creditors who have signed the freezing-of-deposits agreement, but this shall not apply to public depositors or to those depositors and creditors holding preferred claims, or secured claims, nor to correspondent banks holding bills payable of the closed bank. Proper provision must be made in the plan for the reopening of such bank to pay public depositors, depositors and creditors holding preferred claims and secured claims, and correspondent banks, on terms acceptable to them, but any arrangement so made shall not operate prejudicially to the rights of the general depositors and creditors of the bank.

"Section 3. That this Act shall not be construed to give the superintendent of banks the right to diminish the assets of a closed bank to the prejudice of the depositors and creditors thereof, and any assets that may be charged out as doubtful or as losses shall be held by the bank and collected for the benefit of its depositors and creditors, and all amounts so collected shall be held by the bank to be paid to them in accordance with the agreement for the repayment of their deposits and claims.

"Section 4. That this act shall be in force from and after its passage.

"Approved May 18, 1932."

Mississippi, 1932, c. 251; supplement to Mississippi Code of 1930, § 3817-1. The substance of the statute is that the Court of Chancery shall have power to reopen a closed bank in accordance with a plan proposed by at least three-fourths of the creditors and recommended by the Superintendent, if the court is satisfied that the plan is feasible and just. Upon the approval of such a plan, assenting and non-assenting creditors shall be required to accept payment in accordance with its terms. The Superintendent shall have no power to diminish to the prejudice of creditors any assets that otherwise would be available for payment. Liquidation by the bank itself, though in a reorganized form, is to be substituted for liquidation at the hands of a statutory receiver.

Resorting to that statute, about eighty per cent of the creditors signed a "freezing-of-deposits agreement" prescribing a time and method for the payment of the debts. The bank, when reorganized, was to have a capital of $55,000 and a surplus of $45,000, a total capital and surplus of $100,000. Shareholders of the old bank, having shares of the par value of $110,000, were to contribute the new capital ($55,000, or 50% of their old holdings) in cash or its equivalent. In consideration of this payment, they were to be released from any other liability on the old shares, though the statutory liability would attach automatically to the new ones if the reorganized bank were to go under. Shareholders not contributing to capital (representing $90,000 of the old shares) were to remain personally liable as if no plan had been adopted. Of the claims against the old bank as distinguished from those against the shareholders, twenty-five per cent were to be assumed by the reopened bank; seventy-five per cent were to be a charge upon certain assets which were to be placed in a pool and made to realize what they could. Assets having an estimated value in excess of the liabilities assumed were to be turned over to the reopened bank to enable it to make good its promise. This was the primary source of payment, though the covenant of assumption was to be back of it. Out of the assets so delivered deposits of $5 or less, amounting in all to $3,649.87, were to be paid in full. All other claims then outstanding for deposits or other debts were to be ratably satisfied up to the limit of twenty-five per cent, five per cent at once, and the remaining twenty per cent in five per cent instalments as the assets turned over to the reopened bank were con-

verted into cash, the process of conversion being subject to the supervision of the court. Proceeds of collection in excess of the twenty-five per cent were not to be retained, but were to be paid into the pool. Certain other assets having an estimated value of $45,000 were turned over to the reopened bank for surplus or reserve. This amount was to be repaid out of the net earnings at the rate of $7,500 a year by additions to the pool. No dividends were to be declared upon the shares of the reopened bank till all the liabilities assumed by it had been satisfied completely. The assets deposited in the pool were to be administered by the bank as a trust for the benefit of creditors. Many other details would have to be stated to exhibit the plan fully. For an understanding of the objections the outline given will suffice.

The Superintendent of Banks filed a petition in the Court of Chancery approving the plan and recommending its adoption. Notice of hearing was served by publication upon the 5,000 creditors affected, as well as personally upon some of them selected by the court as representing the interests of all. Only a few creditors opposed the granting of the petition. Some of these withdrew their objections at the close of the hearing with the result that the number of opponents was reduced to six. After full consideration, the court on May 15, 1933, entered a decree overruling the objections and reopening the bank in accordance with the plan. Two of the objecting creditors appealed to the Supreme Court of the state, invoking the protection of Article I, § 10, and the Fourteenth Amendment of the Federal Constitution. The decree was affirmed, one judge dissenting. 155 So. 331. The case is here upon appeal. Judicial Code, § 237; 28 U. S. C. § 344.

If we look to the surface of the statute and no farther, there is not even colorable basis for the argument that the Constitution is infringed. All that the statute does upon its face is to change the method of liquidation. The assets of the business are to be devoted without impairment or diversion to the payment of the debts. As to this the statute is explicit. Act of 1932, Chapter 251, § 3. In the discretion of the Court of Chancery a reopened bank is to take the place of the state Superintendent for the purpose of gathering in the assets and discharging liabilities. The substitution may not be made unless the court is satisfied that the reopened bank is solvent and able to satisfy the debts to be assumed. Payment of the creditors is still the end to be attained, and resumption of business a

means and nothing more. If debts are thereby swollen or assets made to shrink, the outcome is an unlooked for incident of a method of administration conceived to be more efficient than present sale and distribution. The Constitution of the United States does not confer upon the depositors a vested right to liquidation at the hands of a state official. *Gibbes* v. *Zimmerman*, 290 U. S. 326, 332.

The argument will not hold that the necessary operation of the statute is to subject dissenting creditors, who may be as many as one-fourth, to the will or the whim of the assenting three-fourths. The creditors favoring reorganization, though they be ninety-nine per cent, have no power under the statute to impose their will on a minority. They may advise and recommend, but they are powerless to coerce. Their recommendation will be ineffective unless approved by the Superintendent. Even if approved by him, it will be ineffective unless the court after a hearing shall find it to be wise and just. Upon such a hearing every objection to the plan in point of law or policy may be submitted and considered. The decree when made by the Chancellor will represent his own unfettered judgment. The judicial power has not been delegated to non-judicial agencies or to persons or factions interested in the event. Like statutes have been upheld by the courts of other states. *Dorman* v. *Dell*, 245 Ky. 34; *Milner* v. *Gibson*, 249 Ky. 594; *Nagel* v. *Ghingher*, (Md.), 171 Atl. 65; *McConville* v. *Fort Pierce Bank & Trust Co.*, 101 Fla. 727; *Smith* v. *Tezley*, 55 S. D. 185; *Hoff* v. *First State Bank of Watson*, 174 Minn. 36; *Paul* v. *Farmers & Merchants State Bank*, 187 Minn. 411.

The Act of 1932 being valid on the surface, the question remains whether it has been so applied or interpreted in the adoption of this plan as to bring out defects that were lurking underneath. *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 289; *Merchants' National Bank* v. *Richmond*, 256 U. S. 635, 637; *Kansas City So. R. Co.* v. *Road Improvement District, No. 6*, 256 U. S. 658, 659.

The argument is made that some of the assets of the old bank are placed at the risk of the business of the new one. All this was done for the protection of existing creditors. The finding is that collections are made more promptly and readily by a going concern than by one in liquidation. Cf. *Christensen* v. *Merchants & Marine Bank of Pascagoula*, 168 Miss. 43, 57. For illustration, a live bank is much more efficient than a closed one in selling parcels of real

estate or in carrying them while unsold at profitable rentals. Adequate precautions are embodied in the plan to assure the enjoyment of these benefits by the creditors and not by others. It is one of the terms of the decree that none of the profits of the business may be used for the new shareholders until every dollar's worth of assets turned over by the Superintendent has been paid to the creditors or delivered to the pool. The court may intervene upon a showing of unreasonable delay. There is no need to consider whether any of these safeguards might have been omitted without invalidating the plan. We take the record as we find it.

The argument is made that a cause of action upon contract has been destroyed or given away to the prejudice of depositors in that shareholders have been released from their personal liability in return for a contribution of capital to the regenerated business. This is said to constitute a denial of due process or an impairment of contract within the doctrine of *Ettor* v. *Tacoma*, 228 U. S. 148, and *Coombes* v. *Getz*, 285 U. S. 434. The answer is much the same as to the argument last considered. The effect of the release has been to make it possible for the bank to be reopened with the result to the creditors of economies and other benefits that would otherwise be lost. During about two years and a half of liquidation there had been collected from the whole body of the shareholders, representing 2,000 shares, a small percentage only of the total liability. The Superintendent expressed the belief that it might be possible in the course of many years and with great expense and labor to bring collections from these sources to a total of $75,000. Through the method called for by the plan, capital in the sum of $55,000 became available at once as additional security for the obligations assumed by the reorganized business. This capital was supplied by the holders of 1,100 shares, whose maximum liability was $110,000. The liability of the other shareholders ($90,000 at the maximum) continued unimpaired for whatever it was worth. The Chancellor found from the evidence that in all probability the moneys thus obtained as contributions to capital could not have been collected by judgment and execution, and that the depositors would be the gainers by the substituted form of payment. He reached that conclusion after a trial in the county of the vicinage with his finger on the pulse of neighborhood conditions. On appeal to the Supreme Court his findings were confirmed. Cf. *Smith* v. *Texley*, *supra*, at p. 195.

In such circumstances it is idle to speak of the release of liability as a gift or a sacrifice of valuable assets. The release was none of that, but a compromise of a liability of uncertain value upon terms beneficial to the creditors. So the trier of the facts has found. The title to the extinguished cause of action was not in the depositors, but in the Superintendent or the bank. If there had been no plan to reorganize, the Superintendent like a receiver might have compromised the cause of action and released it with the approval of the court. His authority was no less because the release was incidental to a project to rehabilitate a business for the good of all concerned. The jurisdiction of the Court of Chancery to give approval to a settlement by a receiver or other officer did not have its genesis in the Act of 1932 or in the procedure there prescribed. It existed in like measure when the liquidation of this bank was begun in 1930 and for many years before. Depositors were chargeable with notice of that power and became subject to its exercise in making their deposits.

In last analysis, then, the appellants' grievance, if they have any, is this and nothing more, that there was error of judgment to their prejudice in the approval of the plan with the compromise of liability as one of its important features. They refer us to nothing in the record to give support to that contention. The testimony as to the probable results of liquidation without the aid of a reopened bank was not contradicted or discredited. But the result would not be changed if the record in that respect were different. Error of judgment in the compromise of liabilities is not a taking of property or an impairment of contract in derogation of the restraints of the Constitution of the United States.

The appellants make the point that by the Act of 1932 a preference was accorded to the claims of correspondent banks, though such a preference did not exist under the statutes in force when the Superintendent went into possession. A sufficient answer is that in this case the correspondent banks were protected by collateral security which apart from the new preference would have required them to be paid in full.

The appellants also say that their constitutional rights were infringed by those provisions of the plan whereby a preference was granted to the holders of small claims. None of these claims ($3,649.87 in the aggregate) was for more than $5, and many, we were informed upon the argument, were for only a few cents. The

Chancellor found by his decree that it would be more economical to pay these accounts in full than to incur the bookkeeping expenses incidental to a calculation of percentages whenever dividends were paid to others. Cf. *Nagel* v. *Ghingher, supra,* at p. 69. The objecting creditors have not been damaged by that feature of the plan.

Finally the appellants say that the proceedings in the Court of Chancery are void for insufficient notice to the depositors and others. A sufficient answer is that the appellants appeared generally and were fully heard upon the merits.

The decree should be affirmed, and it is

So ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.